122-176

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 228.

WILLIAM H. M. SANGER, APPELLANT,

vs.

WILLIAM NIGHTINGALE; WILLIAM NIGHTINGALE, EXECUTOR OF PHINEAS M. NIGHTINGALE, DECEASED; MRS. ELLEN D. NIGHTINGALE; JOHN K. NIGHTINGALE ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED FEBRUARY 4, 1884.

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1 UNITED STATES OF AMERICA, } ss:
Eastern Division, Southern District of Georgia, }

At a stated term of the circuit court of the United States, begun and holden at the United States court-rooms in the city of Savannah, for the eastern division of the southern district of Georgia, on Monday, the ninth day of April, in the year of our Lord one thousand eight hundred and eighty-three—present, the Hon. Henry K. McCay, judge for the northern district of Georgia, presiding under designation and appointment duly made by the circuit judge of the fifth circuit to hold said term, it having been made to appear in accordance with law that the judge for the southern district of Georgia was prevented by physical disability from holding said term—came on for hearing the cause of William H. M. Sanger, complainant, and William Nightingale *et al.*, defendants.

TRANSCRIPT OF RECORD.

2 *Bill of Complaint. Filed April* 8, 1883.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

In the Circuit Court of the United States for the Southern District of Georgia. In Equity.

WILLIAM H. M. SANGER, Complainant,
and
WILLIAM NIGHTINGALE *et als.*, Defendants. } No. 176.

Bill.

To the honorable the judges of the fifth circuit court of the United States for the southern district of Georgia, having jurisdiction in equity:

William H. M. Sanger, of the city of New York, who avers himself to be a citizen of and residing in the State of New York, brings this his bill in equity against—

1. William Nightingale, individually and as the executor of his father, Phineas Miller Nightingale.

2. Mrs. Ellen D. Nightingale, wife of said William Nightingale.

3. John K. Nightingale.

3 4. Mrs. Mary K. Nightingale, widow of Phineas Miller Nightingale.

5. Mrs. Mary R. Troup, formerly Nightingale.

6. Miss Louisa G. Nightingale.

7. Mrs. Ellen K. Fuller, formerly Nightingale, wife of Henry M. Fuller, and—

8. Miss Elizabeth Nightingale (all of which defendants, except the wife of William Nightingale and Mrs. Mary K. Nightingale, are the children of said P. M. Nightingale and said Mrs. Mary K., and all of whom are citizens of and residing in the said southern district of Georgia, except Mrs. Ellen K. Fuller, who is a citizen of and residing in the State of South Carolina), and—

9. Henry Hull.

10. Mrs. Hattie V. Cumming, widow and administratrix of Wallace Cumming, deceased.

11. Robert G. Cole, executor of Archibald H. Cole, deceased, the three last named defendants being citizens of and residing in the said southern district of Georgia.

And your orator complains and says—

1st. That on the sixth day of December, in the year eighteen hundred and sixty-nine, in the city of New York, the said Phineas
4 Miller Nightingale, being then in life and largely indebted to your orator, executed and delivered to your orator his three several promissory notes, each for the sum of ten thousand dollars ($10,000.00), and payable in one, two, and three years from date, with interest at the rate of seven per centum per annum from the date of execution: all of which will appear by reference to copies of said three notes, hereto annexed, marked Exhibit "A," and which is prayed to be made a part of this bill, with liberty of refer-ing thereto as often as may be necessary; and your orator further represents that at the time and place of making said notes the said Phineas M. Nightingale also executed and delivered to your orator, for the better security of said notes, a certain deed of mortgage upon a certain lot or tract of land lying and being in the county of McIntosh, in said southern district of Georgia, known as "Camber's" Island, within the waters of the Altamaha river, and owned by said P. M. Nightingale, a copy of which mortgage is hereto annexed, marked Ex-ibit "B," and prayed to be taken as a part of this bill, with like liberty of reference.

5 And your orator avers that the larger part, if not the whole, of said thirty thousand dollars so due by said P. M. Nightingale had been contracted for advances in money made by your orator to enable said Nightingale to stock, provision, and cultivate the rice plantation upon said Camber's Island. And your orator also avers that no part of the principal or of the interest due upon said notes and mortgage has ever been paid by any one, but that the whole of said sum of thirty thousand dollars, with the interest thereon from 6th December, 1869, is still due to your orator, and is still a lien upon said Camber's Island, as mentioned and set forth in said mortgage.

2d. Your orator further represents that about the — day of April, 1873, the said Phineas M. Nightingale departed this life, leaving a will, which was admitted to probate in the county of Glynn, in the said southern district of Georgia, and under which will the said William Nightingale qualified as executor on 4th of February, 1874, and has not yet been discharged as such executor; all of which appears by certified copies obtained from the court of ordinary of Glynn county, and which will be produced at the hearing, if necessary.

6 Your orator further represents that on or about the 30th January (1855), eighteen hundred and fifty-five, said Phineas M. Nightingale executed and delivered to one Charles Spalding, then and now of said southern district of Georgia, a certain mort-

gage deed upon said Camber's Island to secure the payment of about one hundred thousand ($100,000.00) dollars then due to said Spalding by said Nightingale, and that afterwards, to wit, about the year 1856, said Charles Spalding sold, assigned, and transferred said mortgage to one Edmund Molyneux for the securing of an indebtedness then due from said Spalding to said Molyneux, amounting to about the sum of ninety thousand dollars ($90,000.00).

In the year (1869) eighteen hundred and sixty-nine, and about the time said P. M. Nightingale gave the aforesaid mortgage to your orator, the said E. Molyneux being dead, the representative of his estate, through their solicitors, Mess. Jackson, Lawton, and Basinger, of Savannah, proceeded to foreclose said Molyneux mortgage against said "Camber's" Island in the name of Charles Spalding
7 for the use of said estate of said Molyneux in the superior court of said county of McIntosh, and at the spring or fall term of 1870 of said court obtained a rule absolute upon said foreclosure, none of which proceedings are accessible to your orator, because in the year 1873, eighteen hundred and seventy-three, the court-house in Darien, in said McIntosh county, together with all the records of deeds and all the court papers of said superior court, were destroyed by fire, and the said original mortgage so transferred to Molyneux by said Spalding is now in the custody of said defendants or one of them or their attorneys.

Your orator further represents that after the said foreclosure proceedings were begun in said superior court of McIntosh county and in the month of June, in the year (1870) eighteen hundred and seventy, the said P. M. Nightingale fully adjusted, paid off, and settled said indebtedness to said estate of said E. Molyneux by selling, releasing, and transferring to the widow of said Molyneux, Mrs. Eliza H. Molyneux, who was solely authorized to receive the proceeds of said debt due under said mortgage, all that tract of land known as
"Dunginess," containing about four thousand acres, situate on
8 the south end of Cumberland Island, in Camden county, in said State of Georgia, said sale being for the expressed consideration of twenty-five thousand dollars ($25,000.00), and being made between the parties thereto in full satisfaction, payment, settlement, and cancellation of said mortgage upon "Camber's" Island originally made to Charles Spalding by P. M. Nightingale; all of which will more fully appear by reference to four exhibits hereto annexed, marked, respectively, "C," "D," "E," "F," all of which are prayed to be made a part of this bill, with like liberty of reference, the said Exhibit "C" being a certified copy of the said deed from P. M. Nightingale to Mrs. E. H. Molyneux to "Dunginess," executed on the 21st day of July (1870), eighteen hundred and seventy, the said Exhibit "D" being a copy of a letter written by the said P. M. Nightingale from Brunswick, Georgia, on the 17th June, 1870, addressed to your orator, and wherein said P. M. Nightingale states:
"Mrs. Molyneux, who is my largest creditor, has consented to take
my 'Dunginess' place and release me in full, provided I can
9 arrange with you and others satisfactorily with myself;"
the said Exhibit "E" being a copy of a letter also written

by said P. M. Nightingale to your orator on 26 July (1870), eighteen hundred and seventy (five days after the execution of said deed), and in which it is stated: "I have partitioned out my property among my creditors justly and equitably to the best of my ability and, I am happy to say, satisfactorily to all except yourself;" the said Exhibit "F" being a copy of a letter also written by said P. M. Nightingale on 14th day of October (1870), eighteen hundred and seventy, to some person in New York, in which he states: "I replied to your letter of the 24th ult., stating that I was entirely unable to pay my notes given to Mr. W. H. M. Sanger, and that I had made a full exhibit of my condition financially, and had offered land, which was all that I had to give to my creditors, all of whom had accepted of my proposals for a settlement but Mr. Sanger;" the originals of which three letters will be produced at the hearing, if necessary.

And your orator further represents that the fact of such agreement and settlement between P. M. Nightingale and the
10 Molyneux estate, as shown by the foregoing exhibits, was and is fully confirmed by a letter written on the 29th January (1873), eighteen hundred and seventy-three, by General Alexander R. Lawton, one of the firm of Jackson, Lawton & Basinger, to Charles Spalding, a copy of which letter is hereto annexed, marked Exhibit "G," and prayed to be taken as a part of this bill, with like liberty of reference, and in which said letter, referring to the said mortgage on "Camber's" Island given by P. M. Nightingale to Charles Spalding in the year 1855, and by Spalding transferred to Molyneux in his lifetime, General Lawton says:

"As to the bonds and mortgages made by Mr. Nightingale and by you turned over to Mr. Molyneux, I will, with pleasure, give you all the information in my power. They were handed to us as the legal advisers of the estate, and we had an understanding with Mr. Nightingale as to the amount properly due on the unpaid bonds by deducting so much from the face as was supposed to cover the consideration for the purchase of Negro slaves. With that as a basis, and thus saving the bar of the statute of limitation passed in 1869, we proceeded to foreclose the mortgage, using the
11 name of "Charles Spalding for use, &c., as you were the original obligee of the bond and grantee in the mortgage. By an arrangement afterwards made these bonds and mortgage were absolutely "satisfied," and turned over to Mr. Nightingale.

Your orator further represents that, in the year eighteen hundred and seventy-one (1871), subsequent to the above set forth full satisfaction of said Spalding-Molyneux mortgage and delivery of the same to said P. M. Nightingale, *that* the said P. M. Nightingale procured and induced all the defendants herein named who were members of his family, except his wife, Mrs. Mary K. Nightingale, to make a pretended deed of quit-claim to one George H. Johnston, who had qualified as the administrator of the estate of said E. Molyneux, by which paper said defendants pretended to convey their interest in said "Dunginess" on Cumberland Island, which said property the said P. M. Nightingale had before, to wit, on 21st July,

was bi, deeded to Mrs. Molyneux, a certified copy of which said quit-
dollar is hereto annexed, marked Exhibit "H," and prayed to be
deed w made a part of this bill, with like liberty of reference. And
to said your orator believes and avers that the said defendants so
Nightir signing said pretended quit-claim had no interest whatever,
session or equitable, in the property therein set forth; that such paper
Ap conceived and designed by said P. M. Nightingale to work a
tis wrong upon your orator, to defraud him out of his lien upon "Cam-
ber's" Island, and to hinder, delay, and obstruct your orator in the enforcement of his said mortgage lien upon "Camber's" Island (as will hereinafter be made more fully to appear), and that such intention on the part of said P. M. Nightingale so to defraud, hinder, and delay was known to and participated in by at least two of the defendants, to wit, William Nightingale and John K. Nightingale, and that if the daughters of said P. M. Nightingale were unacquainted with said wrongful and fraudulent intent it was because such was concealed from them by their father and brothers, they being made to believe that it was fair, honest, and proper that they should sign the pretended quit-claim.

And your orator further believes and avers that said quit-claim deed was never executed and delivered to said George H. Johnston, adm'r, &c., at his instance and request, and that said
13 Johnston, nor any one for him, was ever in possession of said quit-claim deed, but that the defendants, or some one of them, since the death of said P. M. Nightingale, or some agent or attorney of theirs, has all the while been in the keeping and control of said paper, and that some one of them, their agent or attorney, caused the same to be placed upon the records of deeds in Camden county on the 27th day of September, 1879.

And your orator further believes and so charges that the said pretended quit-claim deed was not made during the year eighteen hundred and seventy-one, but not until long afterwards; and, as showing complete title in "Dunginess" in said P. M. Nightingale up to the 21st July, 1870, the date of his deed to Mrs. Molyneux, your orator represents that on the 9th day of November (1853), eighteen hundred and fifty-three, said Dunginess property was regularly conveyed to said P. M. Nightingale absolutely and in his own right by one Margaret Greene by a fee-simple deed duly recorded in the county of Camden on the (18th) eighteenth day of January (1857), eighteen hundred and fifty-seven, a certified copy of which
14 deed is hereto annexed, marked Exhibit "I," and prayed to be taken as a part of this bill, with like liberty of reference; and, as showing the same title in P. M. Nightingale, and that the absolute right of ownership was exercised over said property by him, your orator further represents that on the thirtieth (30th) day of December, 1856, eighteen hundred and fifty-six, said P. M. Nightingale executed to the firm of Legare & Colcock, doing business in Charleston, South Carolina, a mortgage upon said "Dunginess" property to secure a debt then due by said P. M. Nightingale to said firm for the sum of forty thousand dollars ($40,000.00), which said mortgage was duly placed upon the records in Camden county on

the 18th day of January, 1857, the same day that was recorded, hteen
said deed from said Margaret Greene; and your orator also represents that in an answer filed on 2d October, 1871, by said Nightingale in this honorable court in an equity cause, wherein Legare & Colcock were complainants and said Nightingale defendant, it was admitted by him that such mortgage was duly executed by him as hereinbefore averred; and, further, that after the death of said P. M. Nightingale, and before the termination of said cause, one of these defendants, William Nightingale, was made a party defendant in said equity cause, and in his connection with said cause failed to set up any claim, either for himself or for his codefendants herein, of any interest, right, or title in or to said "Dunginess" property.

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And your orator further shows unto your honor that in the will of said P. M. Nightingale, hereinbefore referred to as being of file in the office of the ordinary of Glynn county, said Nightingale refers to the property on Cumberland Island, as your orator verily believes, as follows: "I give and bequeath all of my estate, real and personal and mixed, of whatsoever kind and wherever situated, including the estate and property which I took under the will of my late aunt, Mrs. Louisa C. Shaw," &c. And your orator avers that the said Mrs. L. C. Shaw had been Miss Louisa C. Greene, the daughter of Nathaniel Greene, and of his wife, who owned said Cumberland Island property, and after the death of her illustrious husband intermarried with one Phineas Miller, and by her will left said "Dunginess" to her daughter, Louisa C. Greene,

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aunt of said Phineas Miller Nightingale, and who became Mrs. Shaw, who is referred to in the will of P. M. Nightingale as his aunt, and from whom he had bequeathed to him said "Dunginess" property, and that the original of said will is not to be found in the office of the ordinary of Camden county, where it rightly belongs, and that the record of it has been destroyed, it having been recorded on page 7 of record of wills "B," which book has been burned, though the index is in the ordinary's office.

Your orator further represents that in the lifetime of said P. M. Nightingale, and some time during the summer or fall of the year (1872) eighteen hundred and seventy-two, the said P. M. Nightingale, in collusion with possibly all of said defendants, who were members of his own family, and other persons to your orator unknown, and certainly in collusion with said William and John K. Nightingale, caused an execution to be issued from the superior court of McIntosh county, upon the judgment of foreclosure upon said mortgage given by him to Charles Spalding, transferred to E. Molyneux, and foreclosed by Jackson, Lawton, and Basinger

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in the year 1869, as hereinbefore set forth, and caused said execution to be levied upon the said land known as "Camber's" Island, in McIntosh county; all of which is embraced in the mortgage, a copy of which is hereto annexed, marked Exhibit "B;" and after advertising the same in some newspapers published in the city of Savannah had the then sheriff of McIntosh county to put up the same at public outcry on the — day of ——, 1872, when the same

was bid in by said P. M. Nightingale for the sum of thirty thousand dollars ($30,000), and by the direction of said P. M. Nightingale a deed was made by said sheriff, one James R. Bennett, a colored man, to said defendants, William Nightingale and his mother, Mary K. Nightingale, and that said William Nightingale is now in the possession of said Island.

And your orator believes, and so charges, that said levy, advertisement, and sale were totally illegal, collusive, fraudulent, and corrupt on the part of said P. M. Nightingale and said defendants, William and John K.; that neither the said P. M. Nightingale nor either of the said defendants in this bill, nor any other per-
18 son, had any lawful power or right to issue said mortgage execution or to cause such levy and sale to be made; and your orator avers that it was a gross perversion of justice and a flagitious prostitution of the processes of the court by which said persons so engaged in such fraudulent sale did succeed in casting doubts upon the validity of your orator's lien upon said Camber's Island under and by virtue of his said mortgage; and your orator expressly charges that such pretended sale to satisfy the lien which had been cancelled, marked satisfied, and delivered up to the mortgagor, P. M. Nightingale, was in law a mere nullity; was a premeditated and fraudulent endeavor to defeat, hinder, or delay the collection of your orator's demand upon said P. M. Nightingale, and was known to the parties taking said sheriff's deed; and your orator also charges that no consideration passed or was paid to any one at the time of said sale and making of said sheriff's deed except the sum of one hundred dollars paid to said sheriff for his part in the transaction, and that said bid of thirty thousand dollars made by said P. M. Nightingale was colorable and a sham, and the said deed by the
19 *the* said sheriff to William Nightingale and his mother was, in reality and effect, nothing more than a voluntary conveyance—not for a valuable consideration—made to them by said P. M. Nightingale, who at the time was an insolvent debtor.

And your orator avers that he cannot obtain and attach hereto copies of said mortgage, the foreclosure proceedings, and the said sheriff's deed, for the reason that the said court-house in McIntosh county was, as aforesaid, entirely destroyed by fire in the year 1873, though your orator does not know if said sheriff's deed was ever placed upon record, but believes that it was not; and your orator also believes, and so charges, that the said mortgage given by P. M. Nightingale to Charles Spalding about the year 1855 and transferred by him to E. Molyneux, as well as said fraudulent deed made by said sheriff to said two defendants, William Nightingale and his mother, Mrs. Mary K. Nightingale, are both in the possession and under the control of said defendants or some one of them or their agents or attorneys.

And your orator avers that since the pretended and fraud-
20 ulent purchase of said Camber's Island by said William Nightingale in 1872 or 1873 that he has had possession, custody, and control of the same, and has claimed it as his own; that he is deriving very large profits and incomes from its use and cultivation,

and that said island is a very large and valuable rice plantation, susceptible of being made to produce an average of about thirty or forty thousand bushels of rice per annum, of at least the value of a dollar and a half per bushel.

And your orator further represents that on the twenty-ninth (29th) day of January, eighteen hundred and seventy-four, the said William Nightingale, being in possession of said Camber's Island, and being largely indebted to the banking firm of Wallace Cumming & Company, composed at that time of Wallace Cumming, Henry Hull, and Archibald H. Cole, made, executed, and delivered to said W. Cumming & Company a deed to said Camber's Island to secure the payment of said indebtedness, the wife of said William Nightingale, Mrs. Ellen D. Nightingale, joining in said deed, it being made under the provision of an act of the General Assembly
21 of Georgia, as embodied in the code in sections 1969, 1970, & 1971, a certified copy of which deed is hereto annexed, marked Exhibit "K," and prayed to be made a part of this bill, with like liberty of reference.

And your orator avers that said last-mentioned deed was made without any authority so to make it on the part of said William Nightingale and his wife, as the title to said Camber's Island was and is in the heirs of said Phineas M. Nightingale and not elsewhere; and that said deed was and is void, as being made upon the assumption that the title to said island was diverted out of said P. M. Nightingale in his lifetime by the said pretented and fraudulent sale hereinbefore set forth, under the said *fieri facias* issued in the said mortgage foreclosure in McIntosh county.

And your orator further avers that at the spring term, 1879, of the superior court of McIntosh county, a judgment was recorded by Henry Hull, Hattie V. Cumming, adm'x, &c., and R. G. Cole, exu., &c., ag'st William Nightingale for the sum of seven thousand dollars, being the amount for which the said deed of 29th Janu-
22 ary, 1874, was given to secure, and that an execution was issued upon said judgment and levied upon said island, but no sale ever took place.

And your orator further shows that on the eighteenth day of September, 1879, the said defendants, Henry Hull, Hattie V. Cumming, as adm'x, and R. G. Cole, as ex'or, made a deed in affected compliance with the aforesaid sections with the code of Georgia, and caused it to be filed in the clerk's office of the superior court of McIntosh county, a certified copy of which deed is hereto annexed, marked Exhibit "L," and prayed to be made a part of this bill, with like liberty of reference. And your orator avers that, while he does not dispute the validity and fairness of the said judgment of $7,500.00 ag'st said William Nightingale, yet he denies that said judgment has any lien upon said Camber's Island, as contended for by the said defendants herein and the said three plaintiffs in said suit in McIntosh county; but, on the contrary, your orator expressly avers that the said deed from William Nightingale and his wife to said
23 Wallace Cumming & Company, as well as the deed of reconveyance from Henry Hull and the legal representatives of

the estates of W. Cumming and A. H. Cole, were and are inoperative to fasten any lien or incumbrance upon said island as the property of William Nightingale, and that, being nullities and clamor upon the rights of your orator in and so said island, should be so declared by a decree of this honorable court and delivered up for cancellation.

All of which actings, doings, pretences, and collusions of the said defendants and those joining with them are contrary to equity and tend to the manifest injury and oppression of your orator. In consideration whereof and for that your orator is remediless by the strict rules of the common laws, and is relievable only in a court of equity, where matters of this nature are properly cognizable, to the end, therefore, that the said defendants and those confederating and combining with them (who may hereafter be made party defendants to this bill when discovered) may, respectively, full, true, and
24 perfect answer make (discovery under oath from said defendants or either of them being expressly waived), according to the best of their respective knowledge, information, and belief, to all and singular the charges and matters aforesaid as fully in every respect as if they were here again repeated and they particularly thereunto interrogated.

And your orator prays your honors that the said defendants may be compelled to produce in court the original mortgage deed given by Phineas M. Nightingale to Charles Spaulding about the year 1855 and by said Spaulding assigned to said E. Molyneux, and also all papers, processes, foreclosures, writings, and memoranda connected with or relating to said mortgage, and that said defendants may be compelled to produce in court the said paper purporting to be a deed from the sheriff of McIntosh county to said defendants, William Nightingale and his mother, to said Camber's Island, and also the said deed from said William Nightingale and his wife to Wallace Cumming & Company, and the said reconveyance,
25 filed in the clerk's office as aforesaid, from Henry Hull, Hattie V. Cumming, adm'x, and R. G. Cole, executor, and that all these pretended and fraudulent deeds, mortgages, foreclosures, sales, and processes may be decreed to be null, void, and of no effect and to be delivered up for cancellation, and that an account may be decreed to be taken to ascertain what is due your orator upon notes and mortgage given to secure them and herein sought to be foreclosed; that the defendants or some one or more of them may be compelled by a decree of this honorable court to pay to your orator the full amount found due upon said notes and mortgage, including principal, interest, attorney's fees, and all costs, by a short day to be appointed for that purpose by this honorable court, or, in default thereof, that all the said defendants and their respective heirs, executors, administrators, assigns, and all persons claiming or to claim by, from, or under them may be absolutely barred and foreclosed of and from all right and equity of redemption of, in, and to the said estate and every part thereof, and that said Camber's Island,
26 freed from any incumbrances or liens other than the aforesaid mortgage of your orator, may be sold to satisfy and pay off

the indebtedness so to be found due your orator; and that your orator may have such other and further relief in the premises as the nature of the case shall require and as to your honors shall seem meet and equitable.

And may it please your honors to grant unto your orator the writs of subpœna, issuing out of and under the seal of this honorable court, to be directed to said William Nightingale, individually and as executor of the estate and effects of said Phineas M. Nightingale, and to each of the other defendants hereinbefore named, commanding them and each of them, by a certain day and under a certain penalty, to appear before your honor at Savannah, in the said fifth circuit court of the United States for the southern district of Georgia, then and there, at a certain time, to plead, answer, or demur in the premises. And your orator further prays the honorable court that a receiver may be appointed to take charge of
27 said Camber's Island, and run it in the interest of the parties concerned, under the supervision and direction of this honorable court, and further to stand to, perform, and abide by all and every the orders, judgments, and decrees of this honorable court.

And your orator will ever pray, &c., &c.

TOMPKINS & DENMARK,
WALTER A. WAY,
Solicitors for Complainant.

28 EXHIBIT "A."

$10,000.00. NEW YORK, *December 6th*, 1869.

[Internal revenue, $5.00.]

Two years after date I promised to pay William H. M. Sanger, or order, ten thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, in pursuance of the covenants and terms of a mortgage, bearing even date herewith, upon Camber's Island, Georgia, made by me to said Sanger for thirty thousand dollars, to secure this and two other notes of same amount, but running one and three years, respectively, all payable at office of Devant & Waples, Savannah, Georgia.

(S'g'd) P. M. NIGHTINGALE.

$10,000.00. NEW YORK, *December 6th*, 1869.

[Internal revenue, $5.00.]

Three years after date I promised to pay William H. M. Sanger, or order, ten thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, in pursuance of the covenants and terms of a mortgage, bearing even date herewith, upon Camber's Island, Georgia, made by me to said Sanger for thirty thousand dollars, to secure this and two other notes of same
29 amount, but running one and two years, respectively, all payable at office of Davant & Waples, Savannah, Georgia.

(S'g'd) P. M. NIGHTINGALE.

$10,000.00. NEW YORK, *December 6th*, 1869.

[Internal revenue, $5.60.]

One year after date I promised to pay William H. M. Sanger, or order, ten thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, in pursuance of the covenants and terms of a mortgage, bearing even date herewith, upon Camber's Island, Georgia, made by me to said Sanger for thirty thousand dollars, to secure this and two other notes of same amount, but running two and three years, respectively, all payable at office of Davant & Waples, Savannah, Georgia.

(S'g'd) P. M. NIGHTINGALE.

EXHIBIT "B."

This indenture, made the sixth day of December, in the year one thousand eight hundred and sixty-nine, between Phineas M. Nightingale, of ——, in the State of Georgia, party of the first part,
30 and William H. M. Sanger, of Brooklyn, county of Kings, and State of New York, of the second part. Whereas the party of the first part has this day duly made, executed, and delivered to the party hereto of the second part his three certain promissory notes bearing even date herewith, payable one, two, and three years, respectively, for the sum of ten thousand dollars each, with interest thereon at and after the rate of seven per cent. per annum, payable semi-annually, said notes being made payable to the order of the said party of the second part, and subject to the covenants and terms of this mortgage, which they are hereby declared, covenanted, and agreed to be subject to:

Now, this indenture witnesseth: That the said party of the first part, for the better securing the payment of said notes, each and every and all of them, and the said sums of money mentioned therein, both principal and interest, at the time and on the days set forth therein, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowl-
31 edged, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns, forever, all that certain plantation, farm, tract, or parcel of land belonging to the party hereto of the first part situate, lying, and being in McIntosh county, State of Georgia, being the whole of the island known as Camber's Island, lying in the Altamaha river about three miles from Darien, containing about one thousand acres of land, be the same more or less, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in *other*wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in,

and to the same and every part and parcel thereof, with the appurtenances:

To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the
32 second part, his heirs and assigns, to his and their own proper use, benefit, and behoof, forever:

Provided, always, and these presents are upon this express condition, That if default should be made at any time or times in the payment of the said interest upon said notes or any of them, or any part thereof, on any day whereon the same is made payable (which is hereby fixed and agreed upon as the sixth days of June and December in each and every year until said notes shall be paid, respectively), and should the same remain unpaid and in arrears for the space of thirty days, that then and from thenceforth—that is to say, after the lapse of the said thirty days, the aforesaid notes and the principal sum secured thereby, which shall at the time remain unpaid, with all arrearage of interest thereon, shall, at the option of the party of the second part or his legal representatives, become and be due and payable immediately thereafter, although the time limited for the payment thereof may not then have expired, anything in said notes or any of them contained to the contrary thereof in anywise notwithstanding.

33 And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, his heirs, executors, administrators or assigns, therein, at public auction, according to the act in such case made and provided, or otherwise. And, as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said promissory notes, any or either of them, together with the costs and charges of advertisement and sale of said premises, rendering the over-
34 plus of the purchase-money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or either of them.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

P. M. NIGHTINGALE. [L. S.]

[$32.50 worth of U. S. revenue stamps attached to above mortgage.]

Sealed and delivered in the presence of—
J. B. NONES.
JAMES TAYLOR.

This page, 14 line, words "be made payable" erased, and in 28 line, this page, words "or otherwise" interlined, & all before execution.

Certificates of records as follows: Recorded the within deed of mortgage on this the twenty-eighth day of January, A. D. 1870, in Book L, folios 382, '3, '4, & '5.

EDW. E. HOWARD,
Clerk Sup. C't McI. Co.

STATE OF GEORGIA, *McIntosh County:*

CLERK'S OFFICE, SUPERIOR COURT.

This mortgage, together with the commissioner's attestation
35 on certificate annexed hereto, I certify to be recorded in Mortgage Book A, folios 134, 135, 136, 137, this eighth day of January, A. D. 1878.

L. B. DAVIS,
Clerk Sup. C't McI. Co., Ga.

UNITED STATES OF AMERICA.

STATE OF NEW YORK, } ss:
City and County of New York, }

By this public instrument be it remembered that on this eighth day of December, A. D. one thousand eight hundred and sixty-nine, before me, the subscriber, Joseph B. Nones, a commissioner in and for the State of New York, appointed by the Governor of the State of Georgia to take proof and acknowledgment of deeds, mortgages, letters of attorneys, or any other instrument to be used or recorded in the said State of Georgia, and to administer oaths and affirmations, take depositions, &c., &c., personally appeared Phineas M. Nightingale, the person described in and who executed the annexed instrument, and acknowledged to me that he executed the same voluntarily and freely for the uses and purposes therein stated as his free act and deed.

36 And I further certify that I know the person who made the said acknowledgment to be the identical person described in and who executed the said annexed instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal the year, month, and day first before written.

[COMMISSIONER'S SEAL.] J. B. NONES,
Commissioner of the State of Georgia for the State of New York aforesaid, No. 262 Broadway.

EXHIBIT "C."

STATE OF GEORGIA, *Chatham County:*

This indenture, made the twenty-first day of July, in the year of our Lord one thousand eight hundred and seventy, between Phineas M. Nightingale, of the county of Glynn and State of Georgia, party of the first part, and Mrs. Eliza H. Molyneux, of England, party of the second part, witnesseth:

That the said Phineas M. Nightingale, said party of the first part, for and in consideration of the sum of twenty-five thousand dollars to him in hand paid by the said Mrs. Eliza H. Molyneux, said party of the second part, at or before the sealing and delivery of these
37 presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, and confirm, unto the said Mrs. Eliza H. Molyneux, said party of the second part, and to her heirs and assigns, all that certain tract or parcel of land—being the southern portion of Cumberland Island, in the county of Camden, in said State of Georgia, *and*—known as Dungenness, and bounded as follows: On the north by lands of Robert Stafford; on the south by Cumberland Sound; on the east by the Atlantic Ocean, and on the west by Cumberland river, containing four thousand (4,000) acres, more or less, together with all and singular the houses, outhouses, edifices, buildings, stables, yards, gardens, liberties, privileges, easements, commodities, emoluments, hereditaments, rights, members, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents, issues, and profits, and all the estate, right, title, interest, property, and possession, claim and demand, whatsoever, in law or in equity, of the said Phineas M. Nightingale, said party of the first part,
38 of, in, or to the same, or any part or parcel thereof, with the appurtenances; to have and to hold the said tract or parcel of land and all and singular other the premises hereby granted, bargained, sold, aliened, and confirmed, with the hereditaments and appurtenances, unto the said Mrs. Eliza H. Molyneux, said party of the second part, and her heirs and assigns, to the only use and behoof of the said Mrs. Eliza H. Molyneux, said party of the second part, and her heirs and assigns, forever, and to and for no other use, interest, or purpose whatsoever; and, lastly, the said Phineas M. Nightingale, said party of the first part, for himself and his heirs, the said tract or parcel of land and all premises unto the said Mrs. Eliza H. Molyneux, said party of the second part, and her heirs and assigns, against himself, the said Phineas M. Nightingale, said party of the first part, and his heirs, and against all and every other person or persons whatsoever, shall and will warrant and forever defend by these presents.

In witness whereof the said Phineas M. Nightingale has hereunto set his hand and seal the day and year first above written.

T. M. NIGHTINGALE. [L. S.]

Sealed and delivered in presence of us—
A. R. LAWTON.
39 JOHN H. THOMAS,
Notary Public, Chatham County, State of Georgia.

[P. R. stamps, $25.00.]

Recorded and examined this June 3rd, 1871.

GEO. F. CARR,
Cl'k Sup. C't C. C.

STATE OF GEORGIA, *Camden County:*

CLERK'S OFFICE,
SUPERIOR COURT OF SAID COUNTY.

This certifies that the within and foregoing is a true and correct copy of a deed from Phineas M. Nightingale to Mrs. Eliza H. Molyneux as of record in this office, Book Q, pages 328 & 329.

Given under my hand and seal of office this 12th day of April, 1879.

[Seal Superior Court, Camden County, Georgia.]

WM. W. GOWEN, *Clerk*,
By E. A. McWHORTER,
Deputy Clerk.

40 EXHIBIT "D."

BRUNSWICK, *June 17th*, 1870.

MY DEAR SIR: I enclose a statement of my financial condition, and enquire if you are willing to take one-half of my Camber's Island rice plantation for my indebtedness to you. It is the best that I can do for you. The property is really worth what I value it at (the whole place $150,000), and will, I have no doubt, when things are established and labor properly regulated, sell for that amount. My indebtedness now is greater than I can manage under the existing circumstances, and I am determined to relieve myself by a compromise with my creditors, if I can. If I cannot, by going at once into bankruptcy and taking a fresh start at sixty-seven years of age. Mrs. Molyneux, who is my largest creditor, has consented to take my Dungenness place and release me in full, provided I can arrange with you and others satisfactory to myself. She is abroad, residing almost entirely in England, and the time occupied in getting her decision has delayed my communication to
41 you. Please let me hear from you immediately, & oblige—

Your friend,
T. M. NIGHTINGALE.

W. H. M. Sanger, Esqr.

Debts.

Mrs. Molyneux	130 000
W. H. M. Sanger	52 000
Charles Spalding	18 000
Mrs. Greene, est.	8 000
Mrs. Pratt	3 000
Mr. Morris	2 000
Mr. Stafford	3 000
Messrs. Davant, Waples & Co.	2 500
	$218 500

Assets.

Cambers' Island rice plantation,	1,000 acres	$150 000
Dungenness,	4,000 "	80 000
Wakulla land, Florida,	1,000 "	8 000
Orange Lake,	1,000 "	5 000
Scattering lands, "	2,000 "	4 000
Thirty-seven shares M. & B. R. R.		1 000
2 tracts land, Whitfield Co., Ga.		2 000
		$250 000

42 EXHIBIT "E."

BRUNSWICK, GEO., *July 26th*, 1870.

MY DEAR SIR: I have received your letter of 14th inst. Mouth cannot utter words more distinct and plain than those uttered by me in the southeast corner of the eating-room in the Astor House on that bitter cold Monday morning, at breakfast, when I told you of the previous mortgage on Camber's, and you asked me when it was given. I replied previous to the war, & you said it made no difference; you only wanted it to assist you in raising money. This is all I shall say on this subject, because it will do no good to say more, and may do some harm. I am determined to close up my affairs financially, and [as] soon as possible. With this view, therefore, I have partitioned out my property among my creditors justly and equitably, to the best of my ability, and, I am happy to say, satisfactory to all except yourself, to whom I have really offered the most valuable portion at about one-half its intrinsic value in ordinary times when the country is stable & rice is appreciated. If you accede I will commence again
43 next spring, freed from all encumberances, and my friends, who really wish to serve me, if I put myself in a position to be served, will, I believe, help me to purchase your portion of the island on your own terms. If you decline I shall still go on with the settlement in law, but it will take me two or three years to do what can now be accomplished in four months, which will injure me materially at my time of life and damage you seriously, I apprehend. I wish to save and satisfy you, and will do everything for that purpose except to starve myself and family to death, which I

should do if I gave you all of Camber's as you propose. You must, however, make your own choice; I must abide by it and do the best I can. It will be grievous to me to have our kind & friendly relations interrupted, & I do most sincerely hope it may not be necessary or desirable on your part; I am sure it cannot be on mine.

Very truly yours, &c.,

P. M. NIGHTINGALE.

Wm. H. M. Sanger, Esq.

44 EXHIBIT "F."

BRUNSWICK, *Oct. 14th*, 1870.

MY DEAR SIR: I replied to your letter of the 24th ult., stating that I was entirely unable to pay my notes given to Mr. W. H. M. Sanger, and that I had made a full exhibit of my condition financially, and had offered land, which was all that I had to give to my creditors, all of whom had accepted of my proposals for a settlement but Mr. Sanger, and that I was entirely and totally unable to do anything more, which is all that I can say in reply to yours of the 4th inst.

Very respectfully your ob't s'v't,

P. M. NIGHTINGALE.

EXHIBIT "G."

Henry R. Jackson. Alex'r R. Lawton. Wm. S. Basinger.

Jackson, Lawton & Basinger.

LAW OFFICE, SAVANNAH, GA., *January 29th*, 1873.

Col. Charles Spalding, Darien, Ga.

45 MY DEAR SIR: I reply individually to your letter of the 24th inst., addressed to this firm, as I have been almost exclusively consulted by the representatives of Mr. Molyneux's estate and am best acquainted with whatever has transpired in this office bearing on the business of that estate.

As to the extract from a letter dated "5th March, 1856," and the statement of account attached to it, we have no knowledge whatever, nor would [it] come within the purview of our professional relations to the estate to be informed of the condition of Mr. Molyneux's accounts with any one unless there were legal proceedings growing out of it. Mr. Fullarton had the books and accounts of Mr. Molyneux up to two years ago, when they were turned over to Mr. John Cunningham. As to the bonds & mortgage made by Mr. Nightingale and by you turned over to Mr. Molyneux, I will with pleasure give you all the information in my power. They were handed to us as the legal advisers of the estate, and we had an understanding with Mr. Nightingale as to the amount properly due on the unpaid bonds by deducting so much from the face as was sup-

46 posed to cover the consideration for the purchase of negro slaves. With that as a basis, and thus saving the bar of the

statute of limitations passed in 1869, we proceeded to foreclose the mortgage, using the name of "Charles Spalding, for use," &c., as you were the original obligee of the bond & grantee in the mortgage. By an arrangement afterwards made these bonds and mortgage were absolutely "satisfied" and turned over to Mr. Nightingale. How many bonds unpaid there were I have not the means at this moment of saying, but as Mr. Nightingale has them in possession I suggest that you show him this letter and look over them with him. We only know the bonds as the property of the estate of Molyneux, and were never informed that you had any claim on them. I will be happy to give you any further information in my power, especially if you should happen to visit Savannah, so that we could talk it all over.

Very truly yours, A. R. LAWTON.

47 EXHIBIT "H."

STATE OF GEORGIA, *Glynn County:*

Know all men by these presents that we, Louisa G. Nightingale, Mary R. Troup (formerly Nightingale), John K. Nightingale, Ellen Nightingale, Elizabeth Nightingale, and William Nightingale, for and in consideration of the transfer and assignment this day made to us by George H. Johnston, administrator of the estate of Edmund Molyneux, deceased, of a certain judgement in the superior court of Glynn county in favor of the said George H. Johnston, administrator, against Phineas M. Nightingale, for the sum of fifty-one thousand two hundred and fifty dollars ($51,250.00), besides interest and costs of suit; and also for and in consideration of the transfer and assignment this day made to us by the said George H. Johnston, administrator, of a certain mortgage of a tract of land in McIntosh county, known as Camber's Island, made and executed by the said Phineas M. Nightingale to Charles Spalding, and by the said Charles Spalding transferred and assigned to the said Edmund Molyneux while in life for divers other good and valuable considerations, we do hereby give, grant, release, and quit-claim unto

48 Eliza H. Molyneux, widow and sole legatee of the said Edmund Molyneux, deceased, and to her heirs and assigns, all our right, title, interest, and claim in, to, and upon that certain tract or parcel of land, being the southern portion of Cumberland Island, in the county of Camden, and State of Georgia, known as Dungennes, bounded on the north by lands of Robert Stafford, on the south by Cumberland Sound, on the east by the Atlantic Ocean, and on the west by Cumberland river, together with all the improvements, easements, rights, members, and appurtenances thereunto belonging.

In witness whereof we have hereunto set our hands and seals this — day of ——, eighteen hundred and seventy-one.

L. G. NIGHTINGALE. [SEAL.]
M. R. TROUP. [SEAL.]
J. K. NIGHTINGALE. [SEAL.]
B. NIGHTINGALE. [SEAL.]
WM. NIGHTINGALE. [SEAL.]
J. R. TROUP. [SEAL.]
E. K. NIGHTINGALE. [SEAL.]

In presence of—
THOS. M. FOREMAN.
THOMAS E. DAVENPORT,
Notary Public, G. C., Ga.

Examined and recorded September 27th, 1879.
E. A. McWHORTER,
Deputy Clerk.

49 GEORGIA, *Camden County:*

CLERK'S OFFICE,
SUPERIOR COURT OF SAID COUNTY.

This certifies that the within and foregoing is a true and correct copy of quit-claim deed as of record in this office in Book R, page 404, and recorded on the 27th day of September, 1879.

[Seal Superior Court, Camden County, Georgia.]

WM. W. GOWAN, *Clerk,*
By E. A. McWHORTER,
Deputy Clerk.

EXHIBIT "I."

This indenture, made the ninth day of November, in the year of our Lord one thousand eight hundred and fifty-three, between Margaret Green, of the State of Georgia, of the first part, and Phineas M. Nightingale, of the second part, witnesseth:

That the said Margaret Green, for and in consideration of the sum of ten thousand dollars to her in hand paid by the said Phineas M. Nightingale at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bar-
50 gained, sold, aliened, remised, released, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, and confirm, unto the said Phineas M. Nightingale, and his heirs and assigns, all that certain tract or parcel of land—being the southern portion of Cumberland Island, in the county of Camden and said State of Georgia—*and* known as Dungenness, bounded as follows: On the north by lands of Robert Stafford; on the south by Cumberland Sound; on the east by the Atlantic Ocean, and on the west by Cumberland river, containing four thousand acres, more or less, together with all and singular the houses, outhouses, edifices, buildings, stables, yards, gardens, liberties, privileges, easements, commodities, emoluments, hereditaments, rights, members, and appurtenances whatsoever thereunto belonging or in anywise

appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits, and all the estate, right, title, interest, property and possession, claim and demand, whatsoever, in law or in equity, of her, the said Margaret Greene, of, in, or to the same, or any part or parcel thereof, with the appurtenances: to have and to hold the said tract of land,
51 and all and singular other the premises hereby granted, bargained, sold, aliened, and confirmed, with the hereditaments and appurtenances, unto the said Phineas M. Nightingale, and his heirs and assigns, to the only use and behoof of the said Phineas M. Nightingale, and his heirs and assigns forever, and to and for no other use, intent, or purpose whatsoever. And, lastly, the said Margaret Greene, for herself and her heirs, the said tract of land and premises unto the said Phineas M. Nightingale, and his heirs and assigns, against her and her heirs, and against all and every other person or persons whatsoever, shall and will warrant and forever defend by these presents.

In witness whereof the said Margaret Greene has hereunto set her hand and seal the day and year first above written.

MARGARET GREENE. [L. S.]

Sealed and delivered in presence of us—
MARTHA L. SPROULL.
R. B. WARD.
WM. H. MAXWELL,
Commissioner.

STATE OF NEW YORK, }
City & County of New York, } *ss.:*

Be it remembered that on the 22nd day of November, A. D. 1853, the within-named Margaret Greene, who has signed the
52 within deed, personally came *came* before me, William H. Maxwell, commissioner within and for the State of New York, duly appointed by the Governor of the said State of Georgia, and authorized by law to take the acknowledgement and proof of deeds, &c., and acknowledged that she signed, sealed, and delivered the within instrument as her voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and seal the 22nd day of November, 1853.

WM. H. MAXWELL,
Georgia Commissioner, New York.

Recorded & ex'd this Jan. 18th, 1857.

WM. W. GOWEN, *Clk.*

GEORGIA, *Camden:*

CLERK'S OFFICE,
SUPERIOR COURT OF SAID COUNTY.

I hereby certify that the within and foregoing is a true and correct copy of deed, &c., as of record in this office in Book "P," pages 424 & 425.

Given under my hand and seal of office this 4th day December, 1879.

[Seal Superior Court, Camden County, Georgia.]

WM. W. GOWEN, *Clerk.*
By E. A. McWHORTER,
Deputy Clk.

53 EXHIBIT "K."

[50-cent int. revenue stamp, cancelled.]

This indenture, made this 29th day of January, in the year one thousand eight hundred and seventy-four, between Wm. Nightingale and Ellen D. Nightingale, his wife, who becomes a party hereto for the purpose of expressing her consent to the conveyance hereinafter made of the property in this deed described, of the first part, and Wallace Cumming, Archibald H. Cole and Henry Hull, copartners under the firm name of W. Cumming & Company, of the State of Georgia, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of seven thousand five hundred dollars, lawful money of the United States of America, to them in hand paid by the said parties of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do bargain, sell, alien, remise, release, convey, and confirm, unto
54 the said parties of the second part, and to their heirs and assigns, forever, all that tract of land situated, lying, and being in the county of McIntosh, in the said State of Georgia, surrounded by the waters of the Altamaha river, known as Camber's Island, and containing one thousand acres, more or less, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns, forever; and the said parties of the first part, their heirs, the said premises in the quiet
55 and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) WM. NIGHTINGALE.
ELLEN D. NIGHTINGALE.

Signed, sealed, and delivered in the presence of—
J. E. DU BIGNON.
C. P. GOODYEAR,
Clerk of Superior Court, Glynn Co., Georgia.

Recorded Feb'y 5th, 1874.

E. E. HOWARD, *Clerk.*

STATE OF GEORGIA, *McIntosh County:*

CLERK'S OFFICE, SUPERIOR COURT.

I hereby certify the within and foregoing deed to be a true and correct copy from the records of this court as recorded in Book "A" of deeds, folios 203, 204, 205.

56 Witness my official signature and seal of office this 29th day of March, A. D. 1880.

[Seal Superior Court, McIntosh County, Georgia.]

S. B. DAVIS,
Clk Sup. Ct, McI. Co., Ga.

EXHIBIT "L"

GEORGIA:

This indenture, made this 18th day of September, in the year eighteen hundred and seventy-nine, between Harriett V. Cumming, administratrix of the estate of Wallace Cumming, deceased; Robert G. Cole, executor of the will of Archibald H. Cole, deceased, and Henry Hull, all of Chatham county, in the State aforesaid, of the first part, and William Nightingale, of McIntosh county, in said State, of the second part.

Whereas the said party of the second part, by his deed dated the 29th day of January, A. D. 1874—his wife, Ellen D. Nightingale, joining with him therein for the purpose of expressing her
57 consent thereto—conveyed to the said Wallace Cumming and Archibald H. Cole, who have since died, and to the said Henry Hull, as partners under the firm name and style of W. Cumming and Company, all that tract of land situate, lying, and being in the county of McIntosh, in the said State of Georgia, surrounded by the waters of the Altamaha river, known as Camber's Island, and containing one thousand acres, more or less, together with the appurtenances, for the consideration of seven thousand five hundred dollars, and for the purpose of securing to the said W. Cumming & Co. a debt of that amount, for which the said firm then held the note of the said party of the second part; and whereas the said Henry Hull and Archibald H. Cole and the said Har-iet V. Cumming, administratrix as aforesaid, afterward, the said debt not being paid, commenced an action therefor against the said party of the second part in the supreme court of McIntosh county aforesaid, in which they recovered judgement against him at the term of
58 said court which was held in April, A. D. 1879, to wit, on the 30th day of said month of April, for the sum of seven

thousand five hundred dollars and costs of suit; and whereas the said parties of the first part intended to take out execution upon the said judgement and cause the same to be levied on the said tract of land for satisfaction of the said debt, as provided by the laws of said State in such cases made and provided:

Now, therefore, this indenture witnesseth: That the said parties of the first part, in consideration of the premises, and with the intent and for the purpose of complying with the law aforesaid, have granted, conveyed, and confirmed unto the party of the second part all the above mentioned and described land, together with all and singular the rights, members, and appurtenances thereunto belonging, and all the estate, right, title, property, possession, claim, and demand, at law and in equity, of the parties of the first part of, in, and to the same; to have and to hold said property, together with the appurtenances, unto the party of the second part, his heirs and assigns, forever.

59 In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

HARRIETT V. CUMMING, [L. S.]
Adm'x Est. [of] W. Cumming.
HENRY HULL. [L. S.]
R. G. COLE. [L. S.]

Signed, sealed, and delivered in presence of—
WM. S. BASINGER.
THEO. A. ROSSEAU,
Notary Public, Chatham County, Ga.,

Who witness the signatures of Henry Hull & Robert G. Cole.

C. A. ALEXANDER.

[Wilkes County, Ga., Seal Superior Court, 1800.]

GEORGE DRYSON,
Clk. Sup. Court Wilkes Co.,

Witness to the signature of Mrs. H. V. Cumming.

STATE OF GEORGIA, *McIntosh County:*

CLERK'S OFFICE, SUPERIOR COURT.

Recorded in Book "B," of deeds, folios 438, 439, 440, this 27th day of September, A. D. 1879.

S. B. DAVIS,
Clk Sup. Court, McI. Co., Ga.

60 STATE OF GEORGIA, *McIntosh County:*

CLERK'S OFFICE, SUPERIOR COURT.

I hereby certify the above and foregoing to be a true and correct copy of said deed of said parties to Wm. Nightingale, as therein set forth; that said deed is of file in this office under date the 27th day

of September, 1879, and is of record as set forth in said certificate hereto attached.

Witness my official signature and seal of office this 29th day March, A. D. 1880.

[Seal Superior Court, McIntosh County, Georgia.]

S. B. DAVIS,
Clk Sup. C't, McI. Co., Ga.

Acknowledgment of Service.

April 2, 1880.—Due and legal service of the within bill acknowledged; subpœna and all other service waived; consent that bill be filed to May rules.

LESTER & RAVENEL,
Solicitors for Defendants, except Henry Hall and Legal Representatives of W. Cumming & H. H. Cole.
JACKSON, LAWTON & BASINGER,
Def'ts' Sol'rs.

61 Endorsements on bill No. 176, U. S. circuit —: No. 176. U. S. circuit court, southern district of Georgia. In equity. Wm. H. M. Sanger, complainant, and William Nightingale. William Nightingale, executor, &c., *et als.*, defendants. Original bill of complaint. Filed this 8th day of April, 1880. Wm. Heyward, deputy clerk. Tompkins & Denmark, Walter A. Way, sol's for comp't.

Afterwards, to wit, at the May rules, 1880, of the United States circuit court for the southern district of Georgia, held at the clerk's office of said court, in the city of Savannah, on Monday, the third of May, A. D. 1880, appearance was entered for defendants in the words and figures, to wit:

Appearance by Defendants.

WILLIAM H. M. SANGER, Comp't,
and
WILLIAM NIGHTINGALE *et al.*, Def'ts. } In Equity.

62 The defendants in the above-entitled cause now come, at the rules, in May, A. D. 1880, by their solicitors, undersigned, and enter their appearance in said cause May 3rd, 1880.

LESTER & RAVENEL,
JACKSON, LAWTON & BASINGER,
Def'ts' Sol's.

Endorsements: No. 176. U. S. circuit court, southern district of Georgia. May rules, 1880. In equity. William H. M. Sanger, complainant, and William Nightingale *et al.*, defendants. Appearance of defendants. Filed this 3rd day of May, 1880. W. M. Heyward, deputy clerk.

Afterwards, to wit, at the August rules, 1880, of the United States circuit court for the southern district of Georgia, held at the clerk's office of said court, in the city of Savannah, on Monday, the second day of August, A. D. 1880, defendants filed a demurrer in the words and figures, to wit:

Demurrer of Henry Hull et al.

63 WM. H. M. SANGER, Comp't, and WM. NIGHTINGALE *et al.*, Def'ts. } In Equity.

The demurrer of Henry Hull, Harriett V. Cumming, administratrix of the estate of Wallace Cumming, deceased, and Robert G. Cole, executor of the will of Archibald H. Cole, deceased, three of the defendants, to the bill of complaint of William H. M. Sanger, complainant.

These defendants, by protestation, not acknowledging any of the matters and things set forth in the said bill of complaint to be true as the same are therein set forth, do demur thereto, and for cause of demurrer show that the said complainant has not in and by *as* said bill made or stated such a case as does or ought to entitle him to any such discovery or relief as is thereby sought against these defendants.

Wherefore, and for divers other errors and imperfections, these defendants demand the judgment of the court whether they shall be required to make any further or other answer to the
64 said bill, and pray to be hence dismissed with their reasonable costs.

JACKSON, LAWTON & BASINGER,
Def'ts Sol'rs.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

WM. S. BASINGER,
Of Counsel for Def'ts.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

Henry Hull, one of the above-named defendants, comes before the undersigned and says on oath that the foregoing demurrer is not interposed for delay.

HENRY HULL.

Sworn to and subscribed before me this 31st day of July, A. D. 1880.

{ Seal Sigmund Elsinger, Notary Public and *ex officio* Justice of the Peace, Chatham Co., Georgia. }

SIGMUND ELSINGER, *N. P. & J. P.*

65 Endorsements: No. 176. U. S. circuit court, southern district of Georgia. August rules, 1880. In equity. Wm. H.

M. Sanger, complainant, and Wm. Nightingale *et al.*, defendants. Demurrer of Henry Hull *et al.* Filed this 2d day of August, 1880. W. M. Heyward, deputy clerk. Jackson, Lawton & Basinger, defendants' solicitors.

Afterwards, to wit, at the October rules, 1880, of the United States circuit courts for the southern district of Georgia, held at the clerk's office of the said court, in the city of Savannah, on Monday, the fourth day of October, A. D. 1880, decree *pro confesso* as to certain defendants was entered in words and figures, to wit:

Decree pro Confesso as to Certain Defendants.

WM. H. M. SANGER, Complainant,
and
WM. NIGHTINGALE *et al.*, Defendants. } In Equity.

Decree *pro confesso* as to all the defendants except Henry Hull, Harriet V. Cumming, adm'x, and Robert Cole, ex'or.

Service of a copy of the original bill having been duly
66 acknowledged in writing thereon by counsel for all the defendants on 2d April, 1880, and all the defendants having duly entered and appeared on 3d May, 1880, and all the said defendants, except the three above named, having failed to plead, answer, or demur in terms of the law and rules of the court, it is, on motion of counsel for complainant, ordered that the said original bill be taken *pro confesso* as against the said defendants, William Nightingale and William Nightingale, executor, &c.: Mrs. Ellen D. Nightingale, John K. Nightingale, Mrs. Mary K. Nightingale, Mrs. Mary R. Troup, Miss Louisa G. Nightingale, Mrs. Ellen K. Fuller, and Miss Elizabeth Nightingale, and that the cause do proceed to decree.

18th Sept., 1880.

TOMPKINS & DENMARK,
Solicitors for Compl't.

Endorsements: United States circuit court, southern district of Georgia. Ent. A. B., folio 91. Wm. H. M. Sanger, complainant, and Wm. Nightingale *et al.*, defendants. Decree *pro confesso* as to all [the]
defendants except Henry Hull, Harriett V. Cumming, admin-
67 istratrix, & Robert G. Cole, executor. Filed and entered this 4th day of October, 1880. W. M. Heyward, deputy clerk. Tompkins & Denmark, solicitors for complainant.

Afterwards, to wit, at a stated term of the circuit court of the United States of America for the eastern division of the southern district of Georgia, held at the United States court-room, in the city of Savannah, on Monday, the 20th day of December, in the year of our Lord one thousand eight hundred and eighty.

Present: The Honorable John Erskine, judge for said district, presiding:

Order Setting Aside Decree pro Confesso.

WM. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts.

Upon the consent of counsel on both sides in the above-entitled cause it is ordered that the order to take the bill *pro confesso* heretofore entered at rules be set aside, and that the
68 defendants, William Nightingale and others, have leave to withdraw their defective demurrer, filed at August rules last, and demur, plead, or answer by the rule day in February next.

Dec. 20th, 1880.

J. ERSKINE, *Judge.*

Consented to upon condition that an answer shall be filed at same time demurrer is.

TOMPKINS & DENMARK,
Sol's for Comp't, R. E. Lester.
JACKSON, LAWTON & BASINGER,
Def'ts' Sol'rs.

Endorsements: United States circuit court for eastern division, southern district of Georgia. November term, 1880. In equity. Wm. H. M. Sanger, complainant, and Wm. Nightingale *et al.*, defendants. Order setting aside order *pro confesso*, &c. Filed this 20th day of December, 1880. W. P. Ward, clerk.

69 Afterwards, to wit, at the February rules, 1881, of the United States circuit court for the southern district of Georgia, held at the clerk's office of said court, in the city of Savannah, on Monday, the seventh day of February, A. D. 1881, defendants filed demurrer in the words and figures, to wit:

Demurrer and Answer of Wm. Nightingale et al.

WM. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts.

The joint and several demurrer of the defendants, William Nightingale, individually and as executor of the will of Phineas M. Nightingale, and Ellen D. Nightingale, John K. Nightingale, Mary K. Nightingale, Mary R. Troup, Louisa G. Nightingale, Ellen K. Fuller and Elizabeth Nightingale, to part, and their answer to other part of the bill of complaint of William H. M. Sanger, the complainant:

As to so much of the complainant's bill as refers, to the
70 judgment alleged to have been obtained by Henry Hull and others against the defendant, Wm. Nightingale, these defendants, by protestation, not acknowledging anything relating thereto stated in the said bill to be true as therein stated, demur thereto, and for cause of demurrer show that the said complainant has not

in that part of his said bill made or stated such a case as does or ought to entitle him to any such relief as is in that part of his said bill prayed for.

And as to so much of the said bill as prays for the appointment of a receiver "to take charge of the said Camber's Island and run it in the interest of the parties concerned" these defendants demur thereto, and for cause of demurrer show that the said complainant has not in that part of his said bill made or stated such a case as does or ought to entitle him to any such relief.

Wherefore, and for divers other good causes of demurrer in the complainant's said bill appearing, these defendants, as to as much of the said bill as is above set forth, do demur and demand the judgment of the court whether they shall be required to make any other answer thereto; and these defendants, not waiving their said demurrer,

but insisting thereon, for answer to so much of the said bill
71 as they are advised it is material or necessary for them or any of them to make answer unto, severally answering, say that they admit that the said Phineas M. Nightingale did, on the 30th day of January, A. D. 1855, execute and deliver to the said Charles Spalding a mortgage of Camber's Island of that date to secure the payment of certain bonds of the same date, made and delivered by him to the said Charles Spalding, payable to the said Spalding, his heirs, executors, administrators, and assigns, for the aggregate sum of one hundred thousand dollars, with interest at the rate of seven per centum from the date thereof; but these defendants aver that besides the said Camber's Island there were one hundred and thirty-one negro slaves also mortgaged by the said Phineas M. Nightingale to the said Spalding by the same mortgage deed to secure the payment of the same bonds, and that the said sum of one hundred thousand dollars, the aggregate amount of the said bonds, was the purchase-money of the said Camber's Island and the said negro slaves

which had been, by the said Spaulding, by his deed of even
72 date with the said bonds and mortgage, sold and conveyed to the said Nightingale.

And these defendants, further answering, say that it is true that the said Spalding afterwards assigned and transferred the said bonds and mortgage to the said Edmund Molyneux for and in consideration of the sum of one hundred thousand dollars to him therefor paid by the said Molyneux for his own use and benefit.

And these defendants, further answering, say that the first, second, and third of the said bonds, which became due, respectively, on the 30th day of January in each of the years 1856, 1857, and 1858, for the aggregate sum of thirty-five thousand dollars, with the interest thereon, were fully paid by the said Phineas M. Nightingale to the said Edmund Molyneux, and that the fourth of the said bonds, which became due on the 30th day of January, A. D. 1859, for the sum of fifteen thousand dollars, with interest as aforesaid, was assigned and transferred by the said Edmund Molyneux on the 26th

day of January, A. D. 1860, to the firm of Lagrave, Colcock
73 & Co., and was at a later date taken up with assets of the estate of said Edmund Molyneux after his death.

And these defendants, further answering, say that the said Edmund Molyneux died on or about the — day of ——, A. D. 18—, no- intestate, and that one George M. Johnston, of Savannah, in said State of Georgia, was duly appointed administrator of his estate, with will annexed, and that there came into the hands of the said administrator, as assets of the estate of the said Edmund Molyneux to be administered by him, the fifth, sixth, and seventh of the said bonds, which became due, respectively, on the 30th day of January, in the years 1860, 1861, and 1862, being for the aggregate sum of fifty thousand dollars, with interest from their date as aforesaid, and which remained still unpaid in whole or in part by the said Phineas M. Nightingale, and that, not including the amount of the fourth bond, which had been assigned to Legare, Colcock & Co., as aforesaid, which was for the sum of fifteen thousand dollars, with interest as aforesaid, and which was afterwards taken up with
74 assets of the said estate, the whole amount due by the said Phineas M. Nightingale to the said Edmund Molyneux upon the said bonds at the time of the death of the latter was the said principal sum of fifty thousand dollars, with interest thereon at seven per centum per annum from the 30th day of January, A. D. 1855.

And these defendants, further answering, say that, the said Phineas M. Nightingale continuing in his failure to pay the said debt or any part thereof, and the said administrator of the estate of Edmund Molyneux being about, in the performance of his duty, to proceed to collect the same by legal process, negotiations for a settlement of the same were entered into between the said Phineas M. Nightingale and the said administrator some time in the year 1869 or 1870, and, the amount of principal and interest then due by the said Nightingale on the said bonds being about the sum of one hundred and five thousand dollars, it was agreed that, in consequence of the loss of the aforesaid negro slaves, which formed part of the consideration
75 of the said debt as one of the results of the late war between the States, an allowance should be made therefor to the said Nightingale; and the said Nightingale having conveyed to Mrs. Eliza H. Molyneux, the widow and one of the heirs-at-law of the said Edmund Molyneux, a certain tract of land on Cumberland Island, in Camden county, in said State of Georgia, called Dungenness, at the estimated value of twenty-five thousand dollars, which was more than its market value, in part payment of the said debt, which said conveyance was made and delivered on the 21st day of July, A. D. 1870, it was agreed that the remaining amount of the said debts, after allowing for the loss of the said negro slaves, should be fixed at the sum of fifty-one thousand two hundred and fifty dollars, as of the 15th day of October, A. D. 1870, and that the aforesaid bonds remaining unpaid and the mortgage to secure the same should stand good for that amount and no more, and the said administrator proceeded to commence a general
76 action against the said Phineas M. Nightingale in the superior court of Glynn county, in said State, that being the county of his residence, to recover the said debt as adjusted, in which

said action judgment was duly rendered against the said Nightingale for principal, interest, and costs; and also proceeded in the superior court of McIntosh county, in said State, where the land lies, using the name of the said Charles Spalding, as assignor of the said mortgage, to foreclose the said mortgage as against the said Camber's Island, according to the method of foreclosing mortgages of real property prescribed by the law of said State of Georgia, and obtained a rule absolute or judgment of foreclosure upon the said proceedings on the 29th day of November, A. D. 1872, for the aforesaid sum of fifty-one thousand two hundred and fifty dollars, with interest and costs, and took out execution therefor, according to the practice of the superior courts of said State, on the same day.

And these defendants, further answering, say that, as far as they know and believe, the said Phineas M. Nightingale derived his title to the said tract of land on Cumberland Island, called
77 Dungenness through the will of Mrs. Louisa C. Shaw, formerly of said county of Camden, made in the year 1829, and duly admitted to probate and record in said county; and that, after the aforesaid conveyance of that tract of land by the said Phineas M. Nightingale to the said Mrs. Eliza H. Molyneux, a question arose whether, under the said will, the said Phineas M. Nightingale had any more than a life estate in the said property, with remainder to his children; and doubt being entertained of the validity of his said conveyance to Mrs. Molyneux as a conveyance of the fee, the children of the said Phineas M. Nightingale—that is to say, the defendants, Louisa G. Nightingale, Mary R. Troup, John K. Nightingale, Ellen Nightingale (now Fuller), Elizabeth Nightingale, and William Nightingale, being all competent to make such an agreement and conveyance, agreed to and did convey to the said Mrs. Eliza H. Molyneux all their right, title, interest, and estate in the said tract of land called Dungenness under the aforesaid will of Mrs. Shaw, in consideration of the transfer and assignment to them by
78 the said George H. Johnston, administrator as aforesaid, of the aforesaid judgment obtained against the said Phineas M. Nightingale in the said superior court of Glynn county, and of the mortgage aforesaid then in process of foreclosure, which said conveyance was made and dated on the — day of ——, A. D. 1871, and has been duly recorded in the said county of Camden.

And these defendants, further answering, say that the said assignment of the mortgage having been made as aforesaid, the said administrator proceeded with the said foreclosure for their benefit under the assignment; and that, execution having been taken out as aforesaid in pursuance of the rule absolute, the same was levied on the said Camber's Island, and that after due and legal advertisement thereof and other proceedings according to law, the said property was put up for sale at public outcry by the sheriff of the said county of McIntosh, at the court-house door in said county, on the first Tuesday, being the seventh day, of January, A. D. 1873, between the legal hours of sale, and was then and there knocked down to the defendant, William Nightingale, at and for the
79 sum of thirty thousand dollars, the amount of his bid, he being the highest bidder therefor, and that a conveyance

thereof, in pursuance of the said sale, was duly made and delivered to the said William Nightingale by James R. Bennett, the then sheriff of said county, who had made the levy and sale, bearing date the said 7th day of January, A. D. 1873, which was afterwards duly recorded in said county.

And these defendants, further answering, say that the said sale having taken place for their benefit as creditors of the said Phineas M. Nightingale by virtue of the aforesaid assignment to them of the said mortgage, and the purchase of the said property having been actually made for their common benefit by the said William Nightingale, tho' in his own name no actual payment of the amount bid by him for the same was necessary or required, but the amount of the bid was credited on the said execution, and the said William Nightingale gave his promissory note therefor payable to the order of Messrs. Jackson, Lawton & Basinger, but really for the benefit of all the defendants to whom the said mortgage has been as-
80 signed—that course being adopted because it had not then been decided in what manner the several defendants for whose benefit the purchase was made would dispose of their respective interests, or how they would have their respective interests conveyed to them; and the defendants, and more especially the said William Nightingale, aver that he has ever since held and does now hold the title to the said Camber's Island, so far as the interests of his brother and sisters are concerned, as their trustee, and that he has managed and used the said property with their consent for their common benefit, and that the property was, in like manner, with their consent, conveyed by the said William Nightingale; as the nominal owner thereof, to the firm of Wallace Cumming & Co., mentioned in the said bill to secure advances made by the said firm to enable the said William Nightingale to plant the property for their common benefit, and that they do not question in any particular the justice of the claim of the survivors of the said firm of W. Cumming & Co., or the validity of the judgment held by
81 them, but, on the contrary, admit that the said property is subject thereto.

And these defendants admit that the said Phineas M. Nightingale died on the — day of April, A. D. 1873, leaving a last will and testament, which was made on the 9th day of September, A. D. 1869, before any of the transactions hereinbefore mentioned growing out of the proceedings of the said administrator of the estate of Edmund Molyneux to collect the said debt took place, and that the defendant, William Nightingale, was qualified as executor thereof; but the defendants aver that by means of the aforesaid foreclosure and sale the title to the said property passed out of the said Phineas M. Nightingale before his death, and that the same was not a part of the assets of his estate to be administered by the said executor; and these defendants aver that no such settlement as is alleged in the said bill to have been made between the said Phineas M. Nightingale and his creditors in general ever was made, the same, if it was ever contemplated, having been prevented, according to his own

82 shewing, by the refusal of the said complainant to accede thereto; that the said conveyance of Dungeness to Mrs. Eliza H. Molyneux was made in part payment only of the debt due by the said Phineas M. Nightingale, and not in full satisfaction thereof; and these defendants aver that all the said transactions above stated were had and done in perfect good faith, and they deny all allegations in the said bill to the contrary thereof, and aver that all the inferences drawn in the said bill to the contrary of what is hereinbefore stated have no foundation in fact; and these defendants absolutely deny all and every one, the whole and every part, of the frauds charged in the said bill against the said Phineas M. Nightingale and against these defendants or either of them, and they absolutely deny all combination and collusion on the part of these defendants or either of them with the said Phineas M. Nightingale, or any other person whomsoever, for the purpose of injuring or defrauding the said complainant, and pray that they may be hence dismissed with their reasonable costs.

LESTER & RAVENEL,
H. R. JACKSON,
A. R. LAWTON,
WM. S. BASINGER,
Def'ts' Sol's.

83 The undersigned, of counsel for the defendants in the above-entitled cause, hereby certifies that, in his opinion, the foregoing demurrers are well founded in point of law.

WM. S. BASINGER.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

William Nightingale, one of the above-named defendants, comes before the undersigned and deposes that the foregoing demurrers are not interposed for delay.

WILLIAM NIGHTINGALE.

Sworn to and subscribed before me this 28 day of January, A. D. 1881.

[Seal C. H. Dexter, U. S. Commissioner, Southern District of Georgia.]

C. H. DEXTER,
U. S. C. C. Commissioner, So. Dist. Ga.

84 Endorsements: No. 176. In U. S. circuit court for eastern division, southern district of Georgia. February rules, 1881. In equity. William H. M. Sanger, complainant, and William Nightingale *et al.*, defendants. Demurrer and answer of Wm. Nightingale and others. Filed this 7th day of February, 1881. W. M. Heyward, deputy clerk.

Afterwards, to wit, on the 3d day of March, A. D. 1881, a replication was filed by complainant in the words and figures, to wit:

Replication.

In the Fifth Circuit of the U. S. for Southern District of Georgia.

WM. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts.

Bill in equity.

85 This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matter- and things this repliant is and will be ready to prove and aver as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

TOMPKINS & DENMARK,
Sol's for Compl't.

Endorsements: No. 176. In the fifth circuit court of the United States, southern district of Georgia. In equity. Wm. H. M. Sanger, compl't, and Wm. Nightingale *et al.*, def'ts. Replication. Filed this 3d day of March, 1881. W. M. Heyward, dep. cl'k.

86 Afterwards, to wit, on the 19th day of March, A. D. 1881, the defendants filed the following notice and acknowledgment of service in the words and figures, to wit:

Notice to Complainant Under 67th Equity Rule.

In the U. S. Circuit Court for Eastern Division, Southern District of Georgia.

WM. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts. } In Equity.

Acknowledgment of service.

Service of the within notice acknowledged March 18, 1881.

TOMPKINS & DENMARK,
Sol's for Compl't.

Please take notice that, in accordance with the 67th equity rule, the defendants desire the evidence to be adduced in the above-entitled cause to be taken orally.

Very respectfully, &c.,

LESTER & RAVENAL,
JACKSON, LAWTON & BASINGER,
87 By WM. S. BASINGER, *Def'ts' Sol's.*

Endorsements: No. 176. In U. S. circuit court for eastern division, southern district of Georgia. In equity. Wm. H. M. Sanger, complainant, and Wm. Nightingale *et. al.*, defendants. Notice to complainant under 67th equity rule. Filed March 19th, 1881. W. M. Heyward, dep. cl'k.

Afterwards, to wit, at a stated term of the circuit court of the United States of America for the eastern division of the southern district of Georgia, held at the city of Savannah, on Thursday, the 7th day of June, in the year of our Lord one thousand eight
88 hundred and eighty-three—present, the Honorable H. K. McCay, judge of the northern district of Georgia, presiding under assignment as aforesaid—the following order was made and entered of record:

Order Dismissing the Bill as to Certain Defendants.

WM. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts.

Bill for foreclosure.

Upon motion of counsel for complainant, it is ordered by *by* the court that this bill be dismissed as to the defendants, Henry Hull, Mrs. Harriett V. Cumming, administratrix, &c., and Robert G. Cole, executor, &c., without prejudice, and that the cause proceed as to the other defendants.

In open court, 7th June, 1883.

H. K. McCAY,
U. S. Judge.

Endorsements: In the fifth circuit court of the United States, southern district of Georgia. In equity. Wm. H. M. Sanger, complainant, and Wm. Nightingale *et al.*, defendants. Order dis-
89 missing bill as to certain defendants. Filed in clerk's office this 7th day of June, 1883. Marion Erwin, deputy clerk. Tompkins [&] Way, solicitors for complainant.

Afterwards, to wit, at a stated term of the circuit court of the United States in and for the eastern division, southern district of of Georgia, held in the United States court-room, in the city of Savannah, on Thursday, the seventh day of June, A. D. 1883—present, the Honorable H. K. McKay, judge for the northern district of

Georgia, presiding—the complainants amended *their* bill in the words and figures as follows, to wit:

Amendment to Bill.

Wm. H. M. Sanger, Compl't,
and
Wm. Nightingale *et al.*, Def'ts. } In Equity.

And now comes the said complainant, by his solicitors, and, leave of the court being first obtained, amends his original bill as follows:

90 Complainant alleges and sets forth and adopts as part of his bill of complaint, by way of amendment thereto, certain statements, allegations, and admissions made by the answer of those defendants who have answered the said bill, to wit:

"That the said Phineas M. Nightingale did, on the 30th day of January, 1855, execute and deliver to the said Charles Spalding a mortgage of Camber's Island, of that State, to secure the payment of certain bonds of the same date made and delivered by him to the said Charles Spalding, payable to the said Spalding, his heirs, executors, administrators, and assigns, for the aggregate sum of one hundred thousand dollars, with interest at the rate of seven per centum from the date thereof; but these defendants aver that besides the said Camber's Island there were one hundred and thirty-one negro slaves mortgaged by the said Phineas M. Nightingale to the said Spalding by the same mortgage deed to secure the payment of the same bonds, and that the said sum of one hundred thousand dollars, the aggregate amount of the said bonds, was

91 the purchase-money of the said Camber's Island and the said negro slaves, which had been by the said Spalding, by his deed of even date with the said bonds and mortgage, sold and conveyed to the said Nightingale.

And these defendants, further answering, say that *that* it is true that the said Spalding afterwards assigned and transferred the said bonds and mortgage to the said Edmund Molyneux for and in consideration of the sum of $100,000.00, to him therefore paid by the said Molyneux for his own use and benefit.

And these defendants, further answering, say that the first, second, and third of the said bonds, which became due, respectively, on the 30th day of January in each of the years 1856, 1857, & 1858, for the aggregate sum of thirty-five thousand dollars, with the interest thereon, were fully paid by the said Phineas M. Nightingale to the said Edmund Molyneux, and that the fourth of said bonds, which became due on the 30th day of January, 1859, for the sum of fifteen thousand dollars, with interest as aforesaid, was assigned and transferred by said Edmund Molyneux, on the 26th January, A. D.

92 1860, to the firm of Legare, Colcock & Co., and was at a later date taken up with [the] assets of the estate of said E. Molyneux after his death.

And these defendants, further answering, say that the said E.

Molyneux died on or about the — day of ——, 18—, "testate, and that one George H. Johnston was duly appointed administrator of his estate, with the will annexed," and that there came into the hands of the said administrator, "at Savannah, in the State of Georgia," as assets of the estate of the said E. Molyneux, to be administered by him, the fifth, sixth, and seventh of the said bonds, which became due, respectively, on the 30th day of January, in the years 1860, 1861, and 1862, being for the aggregate sum of fifty thousand dollars, with interest from the date thereof, and which remained still unpaid, in whole or in part, by the said Phineas M. Nightingale; and that, not including the amount of the fourth bond, which had been assigned to Légare, Colcock & Co., as aforesaid, which was for the sum of fifteen thousand dollars, with interest aforesaid, and which was afterwards taken up with assets of
93 the said estate, the whole amount due by the said Phineas M. Nightingale to the said Molyneux upon the said bonds at the time of the death of the latter was the principal sum of fifty thousand dollars, with interest thereon from the 30th day of January, A. D. 1855.

And these defendants, further answering, say that the said Phineas M. Nightingale, continuing in his failure to pay the said debt, or any part thereof, and the said administrator of the estate of Molyneux, being about, in the performance of his duty, to proceed to collect the same by legal process, negotiations for settlement of the same were entered into between the said Phineas M. Nightingale and the said administrator some time in the year 1869 or 1870, and the *the* amount of principal and interest then due by the said Nightingale on the said bonds being about the sum of one hundred and five thousand dollars, it was agreed that in consequence of the loss of the aforesaid negro slaves, which formed part of the consideration of the said debt, as one of the results of the war between the States, an allowance then to be made therefor to the said
94 Nightingale, and the said Nightingale having conveyed to Mrs. Eliza H. Molyneux, the widow and one of the heirs-at-law of the said E. Molyneux, a certain tract of land on Cumberland Island, in Camden county, in said State of Georgia, called Dungeness, at *at* the estimated value of twenty-five thousand dollars, * * *, which said conveyance was made and delivered on the 21st day of July, 1870, it was agreed that the remaining amount of the said debt, after allowing for the loss of the said negro slaves, should be fixed at the sum of $51,250.00, as of the 15th day of October, 1870, and that the aforesaid bond remaining unpaid, and the mortgage to secure the same, should stand good for that amount, and no more, and the said administrator proceed to commence a general action against the said P. M. Nightingale in the superior court of Glynn county, in said State, that being the county of his residence, to recover the said debt so adjusted, in which said action judgment was duly rendered against the said Nightingale for principal, interest, and costs, and also proceeded, in the superior court of McIntosh county, in the said State, where the land lies, using the name of the
95 said Charles Spalding, as assignee of the said mortgage, to foreclose the said mortgage as against the said Camber's

Island, according to the method of foreclosing mortgages of real property prescribed by the law of said State of Georgia, and obtained a rule absolute or judgment of foreclosure upon the said proceedings"—which proceedings were just instituted to the April term, 1872, of said superior court—"on 29th November, A. D. 1872, for the aforesaid sum of fifty-one thousand two hundred and fifty dollars, with interest and costs, and took execution therefor, according to the practice of the superior courts of said State, on the same day."

And complainant avers that at the time of the commencement of said suit to foreclose said mortgage in said superior court of McIntosh county the said action arising on said mortgage, having arisen before the 1st day of June, 1865, was barred by the limitation law of 16th March, 1869, passed by the General Assembly of Georgia,

96 and that in the year 1871, when the said defendants, children of said P. M. Nightingale, took the said bonds and mortgage by assignment and transfer from the said administrator of the estate of E. Molyneux, deceased, the said bonds and mortgage were all past due and at that time barred by the said act of 16th March, 1869; and complainant avers that the failure of the said P. M. Nightingale to plead the said statute of limitations of 16th March, 1869, in bar of the said foreclosure of said mortgage in the name of Charles Spalding, &c., and really for the use of the children of the said P. M. Nightingale, does not and cannot in law nor in equity affect the right of complainant now to plead and avail himself of the said limitation law.

Wherefore, in addition to the prayers of the original bill, complainant further prays that this honorable court will decree the said foreclosure of said mortgage in said McIntosh county of Charles Spalding, &c., *v.* P. M. Nightingale is void and of no effect by virtue of said limitation law of 16th March, 1869, as against the claims,

97 rights, and demands of complainant under the mortgage upon said Camber's Island now sought to be foreclosed by this bill; and complainant prays for all such other and further relief, orders, judgments, and decrees as in the nature of the case shall be meet and equitable, &c., &c.

HENRY B. TOMPKINS,
W. A. WAY,
Sol's for Compl't.

Endorsements: In fifth circuit court United States, at Savannah, Georgia. In equity. Wm. H. M. Sanger, compl't, and Wm. Nightingale *et al.*, def'ts. Amended bill, &c. Filed in clerk's office this 7th day of June, A. D. 1883. Marion Erwin, dep. cl'k.

Afterwards to wit, at a stated term of the United States circuit court for the eastern division, southern district of Georgia, held in the United States circuit court-room, in the city of Savannah, on

98 Saturday, the ninth day of June in the year of our Lord one thousand eight hundred and eighty-three—present, the Honorable H. K. McKay, judge for the northern district of

Georgia, presiding as aforesaid—the following order was made and entered of record in the words and figures, to wit:

Order to Render Decision in Vacation.

WM. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts. } In Equity.

Order reserving decision.

This cause came on for hearing upon pleadings and proofs, and after the argument the court reserved its decision, and it is ordered that the decision may be rendered and filed in vacation, with the same liberty of appeal thereafter to either party as if decided in term time.

In open court, 9th June, 1883.

H. K. McKAY,
U. S. Judge.

Endorsement: In the fifth circuit court of U. S., at Savannah. In equity. Wm. H. M. Sanger, complainant, and Wm. Nightingale *et al.*, def'ts. Order to render decision in vacation. Filed in clerk's office this 9th day of June, 1883. Marion Erwin, dep'y clerk C. C.

99 Afterwards, to wit, in the circuit court of the United States for the eastern division, southern district of Georgia, on Wednesday, the eleventh day of July, in the year of our Lord one thousand eight hundred and eighty-three, the following decree was rendered at chambers and entered of record in the words and figures, to wit:

Final Decree.

WM. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts. } In Equity.

Bill, &c.

The above cause having been heard on the bill, answers, and testimony, at Savannah, during the April term, 1883, of the circuit court, and an order having been taken rendering a decision in the cause during vacation and after adjournment, and the court having now fully considered the matter, it is decreed that the prayer of the complainant's bill be denied; that the sheriff's deed to W. J. Nightingale for the uses specified by the sheriff of McIntosh county
100 be confirmed and the *the* rights of complainants to foreclose be refused; and it is further decreed that the defendants recover of complainants the sum of — dollars, costs.

July 11th, 1883.

H. K. McCAY,
U. S. Judge.

Endorsements: In the fifth circuit court of the United States for the eastern division, southern district of Georgia. Wm. H. M. Sanger, compl't, and Wm. Nightingale *et al*, Def'ts. In equity. Bill, &c. Final decree. Filed in clerk's office this 14th day of July, 1883. Marion Erwin, deputy cl'k.

Testimony and Proofs Introduced in Evidence by Complainants:

Mortgage. Phineas M. Nightingale to Wm. H. M. Sanger, dated December 6, 1869.

This indenture, made the sixth day of December, in the year
101 one thousand eight hundred and sixty-nine, between Phineas M. Nightingale, of ——, in the State of Georgia, party of the first part, and William H. M. Sanger, of Brooklyn, county of Kings, and State of New York, of the second part.

Whereas the party of the first part has this day duly made, executed, and delivered to the party hereto of the second part his three certain promissory notes bearing even date herewith, payable one, two, and three years, respectively, for the sum of ten thousand dollars each, with interest thereon at and after the rate of seven per cent. per annum, payable semi-annually, said notes being made payable to the order of the said party of the second part, and subject to the covenants and terms of this mortgage, which they are hereby declared, covenanted, and agreed to be subject to:

Now, this indenture witnesseth: That the said party of the first part, for the better securing the payment of said notes, each and every and all of them, and the said sums of money mentioned therein, both principal and interest, at the times and on the days set forth therein, according to the true intent and meaning
102 thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns, forever, all that certain plantation, farm, tract, or parcel of land belonging to the party hereto of the first part situate, lying, and being in McIntosh county, State of Georgia, being the whole of the island known as Camber's Island, lying in the Altamaha river about three miles from Darien, containing about one thousand acres of land, be the same more or less—

Tog*a*ther with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in *other*wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right,
103 title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and every part and parcel thereof, with the appurtenances:

To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof, forever:

Provided, always, and these presents are upon this express condition, That if default should be made at any time or times in the payment of the said interest upon said notes or any of them, or any part thereof, on any day whereon the same is made payable (which is hereby fixed and agreed upon as the sixth days of June and December in each and every year until said notes shall be paid, respectively), and should the same remain unpaid and in arrears for the space of thirty days, that then and from thenceforth—that is to say, after the lapse of the said thirty days, the aforesaid notes and the
104 principal sum secured thereby, which shall at the time remain unpaid, with all arrearage of interest thereon, shall, at the option of the party of the second part or his legal representatives, become and be due and payable immediately thereafter, although the time limited for the payment thereof may not then have expired, anything in said notes or any of them contained to the contrary thereof in anywise notwithstanding.

And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, his heirs, executors, administrators or assigns, therein, at public auction, according to
105 the act in such case made and provided, or otherwise. And, as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said promissory notes, any or either of them, together with the costs and charges of advertisement and sale of said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators, or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or either of them.

In witness whereof the parties to these presents have here-
106 unto set their hands and seals the day and year first above written.

P. M. NIGHTINGALE. [L. S.]

[$32.50 worth of U. S. revenue stamps attached to above mortgage.]

Sealed and delivered in the presence of—
J. B. NONES.
JAMES TAYLOR.

This page, 14 line, words "be made payable" erased, and in 28 line, this page, words "or otherwise" interlined, & all before execution.

Certificates of records as follows: Recorded the within deed of mortgage on this the twenty-eighth day of January, A. D. 1870, in Book L, folios 382, '3, '4, & '5.

EDW. E. HOWARD,
Clerk Sup. C't McI. Co.

STATE OF GEORGIA, *McIntosh County:*

CLERK'S OFFICE, SUPERIOR COURT.

This mortgage, together with the commissioner's attestation on certificate annexed hereto, I certify to be recorded in Mortgage Book A, folios 134, 135, 136, 137, this eighth day of January, A. D. 1878.

L. B. DAVIS,
Clerk Sup. C't McI. Co.

107 UNITED STATES OF AMERICA.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

By this public instrument be it remembered that on this eighth day of December, A. D. one thousand eight hundred and sixty-nine, before me, the subscriber, Joseph B. Nones, a commissioner in and for the State of New York, appointed by the Governor of the State of Georgia to take proof and acknowledgment of deeds, mortgages, letters of attorneys, or any other instrument to be used or recorded in the said State of Georgia, and to administer oaths and affirmations, take depositions, &c., &c., personally appeared Phineas M. Nightingale, the person described in and who executed the annexed instrument, and acknowledged to me that he executed the same voluntarily and freely for the uses and purposes therein stated as his free act and deed.

And I further certify that I know the person who made the said acknowledgment to be the identical person describe- in and who executed the said annexed instrument.

108 In testimony whereof I have hereunto subscribed my name and affixed my official seal the year, month, and day first before written.

[COMMISSIONER'S SEAL.] J. B. NONES,
Commissioner of the State of Georgia for the State of New York aforesaid, No. 262 Broadway.

Notes [of] P. M. Nightingale to W. H. M. Sanger.

$10,000.00. NEW YORK, *December 6th*, 1869.

[Internal revenue, $5.00.]

Two years after date I promise to pay William H. M. Sanger, or order, ten thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, in pursuance of the covenants and terms of a mortgage, bearing even date herewith, upon Camber's Island, Georgia, made by me to said Sanger for thirty thousand dollars, to secure this and two other notes of same amount, but running one and three years, respectively, all payable at office of Devant & Waples, Savannah, Georgia.

P. M. NIGHTINGALE.

109 $10,000.00. NEW YORK, *December 6th*, 1869.

[Internal revenue, $5.00.]

Three years after date I promised to pay William H. M. Sanger, or order, ten thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, in pursuance of the covenants and terms of a mortgage, bearing even date herewith, upon Camber's Island, Georgia, made by me to said Sanger for thirty thousand dollars, to secure this and two other notes of same amount, but running one and two years, respectively, all payable at office of Davant & Waples, Savannah, Georgia.

P. M. NIGHTINGALE.

Mortgage Fieri Facias.

STATE OF GEORGIA, *McIntosh County:*

To all and singular the sheriffs of said State, greeting:

We command you that of "all that certain tract, piece, or
110 parcel of land situate, lying, and being in the county of McIntosh and State aforesaid, known as the Camber's Island tract, described in a certain deed of conveyance of the same, made by William Mein to Thomas Spalding on the ninth day of April, in the year of our Lord one thousand eight hundred and nineteen, in the following words, to wit: 'All that tract of land, being an island commonly known by the name of Camber's Island, which is composed of the two following tracts or parcels of land, to wit: All that tract or parcel of land containing four hundred and seventy acres, being part or parcel of the said island, commonly called Camber's Island, situate and being in the river Altamaha, in the (former) parish of St. Andrew, (now county ——), in the province, (now) State of Georgia, bounded at the time of the original grant thereof east by lands of Thomas Cambers; south by Crooked creek, and all other sides by the river Altamaha, originally granted on the twenty-first day of May, in the year of our Lord one thousand seven hundred and sixty-two, to Francis Gaffe,' and then
111 further describing a second tract of land in words following, to wit: All that other tract or parcel of land,

containing four hundred and fifty acres, being the remaining part or parcel of the said island commonly called Camber's Island, situate and being in the said river Altamaha, in the State and county aforesaid, bounded on the south by Crooked creek, on the west by the above tract, being vacant at the time of survey, and on all other sides by the said river Altamaha, originally granted on the twenty-first day of May, in the year of our Lord one thousand seven hundred and sixty-two, to Thomas Camber, the said — forming and being the said tract of Camber's Island, the property of Phineas M. Nightingale, described and conveyed in a certain indenture of mortgage, bearing date on the thirtieth day of January, eighteen hundred and fifty-five, you cause to be made the sum of fifty-one thousand two hundred and fifty ($51,250.00) dollars, principal, and ten thousand four hundred and sixty-three $\frac{54}{100}$ ($10,463.54) dollars, interest, and — nine $\frac{75}{100}$
112 dollars, costs, which Charles Spalding, suing for the use of George H. Johnston, administrator of the estate of Edmund Molyneux, lately in our superior court at Darien, in the county aforesaid, recovered against the said Phineas M. Nightingale on foreclosure of mortgage, as well for damages by reason of the non-performance of certain promises by the said Phineas M. Nightingale before that time made as for costs and charges in his suit in that behalf expended, whereof said Phineas M. Nightingale is convicted and liable, as to us appears of record, and have the said sums of money before the said court, at Darien aforesaid, on the fifteenth day in April next, to render to the said Charles Spalding his damages, costs, and charges aforesaid: and have you then and there this writ.

Witness the Honorable William Schley, one of the judges of the superior court, this twenty-ninth day of November, A. D. 1872.

(Seal Edw. E. Howard, Clerk Superior Court, McIntosh County, Georgia.)

EDW. E. HOWARD,
C. S. C. McI. Co.

113 Endorsements: In the superior court of McIntosh county. Charles Spalding, for use, &c., *vs.* Phineas M. Nightingale. Mortgage *fieri facias*.

Principal	$51,250 00
Interest	10,463 54
Costs	9 75
	$61,723 29

Jackson, Lawton & Basinger, pl'ff's att'ys.

Endorsement of Levy.

In compliance with the within *fieri facias*, I have this day entered upon the within-described property and levied the same, serving

W. C. Wylly, tenant in possession, with a written notice; also P. M. Nightingale, this Nov. 30th, 1872.

JAMES R. BENNETT,
Sheriff McIntosh County.

	9 75
Levy	2 00
Advertising	10 00
	21 75

Sheriff's Return.

Received of Wm. Nightingale $30,000 00, the highest and best bid at the sale of the certain named property, and remitted the same this day, through Jackson, Lawton & Basinger, through W. Rob't Gignilliat, as per their instructions.

January 7th, 1873.

JAMES R. BENNETT,
Sh'ff McI. Co.

114 *Deed from James R. Bennett, Sheriff, to Wm. Nightingale.*

GEORGIA, *McIntosh County:*

This indenture, made the seventh day of January, in the year of our Lord one thousand eight hundred and seventy-three, between James R. Bennett, sheriff of said county of McIntosh, of the first part, and William Nightingale, of the county of GLYNN, ——, of the second part, witnesseth:

That whereas said sheriff did lately sieze and levy upon all that tract of land, being an island, commonly known as Camber's Island, which is composed of the two following tracts or parcels of land, to wit: All that tract of land, containing four hundred and seventy acres, being part or parcel of the said island, commonly called Camber's Island, situate and lying in the river Altamaha, in the former parish of St. Andrew, now county of McIntosh, in formerly the province, now State, of Georgia, bounded at the time of the original grant thereof, east by the lands of Thomas Cambers, south by Crooked creek, and on all other sides by the river Altamaha,
115 originally granted on the twenty-first day of May, in the year of our Lord one thousand seven hundred and sixty-two, to Francis Gaffe; and then further describing a second tract of land, to wit: All that other tract or parcel of land containing four hundred and fifty acres, being the remaining part or parcel of the said island, commonly called Camber's Island, situate, lying, and being in the said river Altamaha, in the State and county aforesaid, bounded on the south by Crooked creek, on the west by the above tract—being vacant at the time of survey—and on all other sides by the said river Altamaha, originally granted, on the twenty-first day of May, in the year seventeen hundred and sixty-two, to Thomas Cambers, the said two tracts forming and being the said tracts of Camber's Island levied on as the property of Phineas M. Night-

ingale by virtue of a mortgage *fieri facias* issued out of the superior court of McIntosh county in favor of Charles Spalding, notice of said levy having been given in accordance with law to the tenant in possession;

116 And after publicly advertising said tracts or parcels of land known as Camber's Island in the Savannah Republican, agreeably to law, said sheriff did put up and expose the same to sale at public outcry, on the first Tuesday, being the seventh day, of January, in the year eighteen hundred and seventy-three, at the door of the court-house in Darien, in said county, within the legal hours of sale, when said tracts or parcels of land known as Camber's Island were knocked off to the said William Nightingale for the sum of thirty thousand dollars, he being the highest and best bidder: Now, for and in consideration of the said sum of thirty thousand dollars in hand paid to said sheriff by him, the said William Nightingale, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said sheriff hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, so far as the office of sheriff authorizes him, unto him, the said William Nightingale, and unto his heirs and assigns, all the right, title, and interest of the said

117 Phineas M. Nightingale in said tracts or parcels of land of which the said P. M. Nightingale was seized and possessed as aforesaid, with all the rights, members, and appurtenances thereunto belonging or in anywise appertaining, to his and their own proper use, benefit, and behoof forever.

In witness whereof the said James R. Bennet, sheriff as aforesaid, hath hereunto set his hand and affixed his seal the day and year first above written, noting erasure and interlineation of the word "seven," on the first line of the second page, before signature.

JAMES R. BENNETT, [SEAL.]
Sheriff McIntosh County.

Signed, sealed, and delivered in presence of—
THOMAS WHEELER.
W. ROB. GRIGNILLIAT,
Not. Pub., McI. Co., Geo.

Recorded in Book M, folios 222, 223, this Jan. 7th, 1873.
EDW. E. HOWARD,
Clk Sup. Ct McI. Co., Georgia.

118 *Wm. Nightingale's Note for Purchase-Money at Sheriff's Sale.*

$30,000.00 DARIEN, *January 7th*, 1873.

One day after date I promise to pay to Jackson, Lawton & Basinger, or order, thirty thousand $\frac{00}{100}$ dollars for value received, purchase-money of Camber's Island, sold at sheriff's sale this day.

WM. NIGHTINGALE.

Messrs. Jackson, Lawton & Basinger, Savannah, Geo.

GENTLEMEN: Mr. William Nightingale bid off Camber's Island at $30,000.00, and I have taken his note for same (in accordance with the tenor of your instructions), payable one day after date, which please find enclosed, together with sheriff's receipt for all costs and fees in suit and sale.

Yours respectfully, W. ROB. GIGNILLIAT.

Darien, January 7th, 1873.

119 *Mortgage of January 30th, 1855, [of] Phineas M. Nightingale to Charles Spalding.*

STATE OF GEORGIA, *McIntosh County:*

This indenture, made the thirtieth day of January, in the year of our Lord one thousand eight hundred and fifty-five, between Phineas M. Nightingale, of the county of Baker, in the State aforesaid, of the first part, and Charles Spalding, of the county of McIntosh and State of Georgia, of the second part, witnesseth: Whereas the said Phineas M. Nightingale, party of the first part, is justly indebted unto the said Charles Spalding, party of the second part, in the sum of one hundred thousand dollars, lawful money of the United States of America, secured to be paid by seven certain bonds or obligations, bearing even date with these presents; the first of which said bonds is in the penal sum of twenty thousand dollars, conditioned for the payment of ten thousand dollars, a portion of said debt, at the expiration of one year from the execution of said instrument, together with lawful interest on the same at the rate of seven per centum per annum; the second of which said bonds is
120 in the penal sum of twenty thousand dollars, conditioned for the payment of ten thousand dollars, a portion of said debt, at the expiration of two years from the execution of such instrument, together with lawful interest on the same at the rate of seven per centum per annum; the third of which said bonds is in the penal sum of thirty thousand dollars, conditioned for the payment of fifteen thousand dollars, a portion of said debt, at the expiration of three years from the execution of such bond, together with lawful interest on the same at the rate of seven per centum per annum; the fourth of which said bonds is in the penal sum of thirty thousand dollars, conditioned for the payment of fifteen thousand dollars at the expiration of four years from the execution of such bond, together with lawful interest on the same at the rate of seven per centum per annum; the fifth of which said bonds is in the penal sum of forty thousand dollars, conditioned for the payment of twenty thousand dollars at the expiration of five years from the execution of such bond, together with lawful interest on the same
121 at the rate of seven per centum per annum; the sixth of which said bonds is in the penal sum of thirty thousand dollars, conditioned for the payment of fifteen thousand dollars at the expiration of six years from the execution of such bond, together with legal interest on the same at the rate of seven per centum per

annum; the seventh of which said bonds is in the penal sum of thirty thousand dollars, conditioned for the payment of fifteen thousand dollars at the expiration of seven years from the execution of such bond, together with legal interest on the same at the rate of seven per centum per annum; all of which said bonds are made to and in favour of the said Charles Spalding, his heirs, executors, administrators, and assigns, by the said Phineas M. Nightingale, and signed with the hand and sealed with the seal of the said Phineas M. Nightingale, and the payment of each sum and interest thereon secured in each and every of such bonds is appointed by the said Phineas M. Nightingale to the said Charles Spalding, his heirs, executors, administrators, and assigns; all of which will more fully appear by a reference to the said bonds:

122 Now, then, this indenture witnesseth:

That the said party of the first part, the said Phineas M. Nightingale, for the better securing the payment of the said several sums of money in the said conditions of the said bonds, according to the true intent and meaning thereof, and also for and in consideration of one dollar to him in hand paid by the said Charles Spalding at or before the ensealing of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, aliened, released, and conveyed, and doth by these presents grant, bargain, and sell, alien, release, and convey, all that certain tract, piece, or parcel of land known as the "Camber's Island tract," situate, lying, and being in the county of McIntosh and State aforesaid, described in a certain deed of conveyance from Charles Spalding to the said Phineas M. Nightingale, of the same date with these presents, but executed previously to the signing and ensealing of this instrument, in the following words, to wit: "All that certain tract, piece, or parcel of land situate, lying, and being in the county of McIntosh and State aforesaid, known as the Camber's Island tract, de-

123 scribed in a certain deed of conveyance of the same made by William Mein to Thomas Spalding on the ninth day of April, in the year of our Lord one thousand eight hundred and nineteen, in the following words, to wit: 'All that tract of land, being an island, commonly known by the name of Camber's Island, which is composed of the two following tracts or parcels of land, to wit, all that tract or parcel of land containing four hundred and seventy acres, being part or parcel of the said island, commonly called Camber's Island, situate and being in the river Altamaha, in the (former) parish of St. Andrew (now county of ——), in the province (now State) of Georgia, bounded, at the time of the original grant thereof, east by lands of Thomas Camber's, south by Crooked creek, and on all other sides by the said river Altamaha, originally granted on the twenty-first day of May, in the year of our Lord one thousand seven hundred and sixty-two, to Francis Gaffe;'" and then further describing a second tract of land in words following, to wit: "All that other tract or parcel of land containing four hundred and fifty acres, being the remaining part or parcel of the said island, commonly called Camber's Island, situate and being in the said river

124 Altamaha, in the State and county aforesaid, bounded on

the south by Crooked creek, on the west by the above tract, being vacant at the time of survey, and on all other sides by the said river Altamaha, originally granted, on the twenty-first day of May, in the year of our Lord one thousand seven hundred and sixty-two, to Thomas Cambers, the said — forming and being the said tract of Camber's Island, to the said Charles Spalding, party of the second part to these presents, his heirs, executors, administrators, and assigns, forever; to have and to hold the said bargained premises to his and their sole use and behoof in fee-simple. And for the considerations hereinabove expressed the said Phineas M. Nightingale hath also granted, bargained, and sold, and doth by these presents grant, bargain, and sell, unto the said Charles Spalding, his heirs, executors, administrators, and assigns, certain negro slaves, being the slaves previously conveyed by the said Charles Spalding in the conveyance of this date, hereinabove referred to, to wit: (1) Daniel, (2) Sarah, (3) Daniel, (4) Edinboro', (5) Priscilla, (6) Mary, (7) Gibb, (8) Silvy, old, (9) Sally, (10) Jane, (11) Billy, (12)
125 Carry, (13) Charles, (14) Madge, (15) Harry, (16) Leah, (17) Abram, (18) Clarissa, (19) Peggy, (20) Pleasant, (21) Betty, (22) Betsy, (23) Elsy, (24) Jeffery, (25) Lavinia, (26) Mary, (27) Molly, (28) Charles, (29) Jim, boy, (30) Tim, (31) Mary, (32) Cato, (33) Bob, (34) Smith, (35) Prince, old, (36) Penny, (37) Margaret, (38) Sarah, (39) Mary, (40) Prince, (41) Silvy, *alias* Phillis, (42) Clemone, (43) Sandy, (44) Stephen, old, (45) Lilly, (46) Tench, old, (47) Leiah, (48) Robert, (49) Louden, (50) Celia, (51) Alex., (52) Jacob, old, (53) Martha, (54) Lettice, (55) Jacob, (56) January, (57) Elizabeth, (58) Priscilla, (59) Hannah, (60) Mary Ann, (61) Sally, (62) John, (63) Charles, (64) George, (65) Eve, (66) Gibb, (67) Judy, (68) Priscilla, (69) Rebecca, (70) Cooper, (71) Queen, (72) Becky, (73) Maria, (74) Prince, (75) Charlotte, (76) Catharine, (77) John, (78) Jim, (79) Charity, (80) Peter, old, (81) Eve, (82) Peter, (83) Fergus, (84) Pompey, (85) Judy, (86) Pompy, (87) Bocharra, (88) Sammy, (89) Trim, old, (90) Phillis, (91) Trim, young, (92) Molly, (93) James, (94) Tim, (95) Polly, (96) Fanny, (97) Romeo, (98) Minta, (99) Silva, (100) Smith, (101) Eliza, (102) Sarah, (103) Polydore, (104) Lizzie, (105) Affee, (106) Rose, (107) Polydore, (108) Harriet, (109) Hannah, (110) Nancy, (111) Fergus, (112) William, (113) Frances, (114) Sammy, (115) Martha, (116) Fanny, (117) William, (118) Aveline, (119) Richard, (120) Lettice, (121) Elijah, (122) Lucy, (123)
126 Abbas, (124) Peggy, (125) Silas, (126) Job, (127) Gibb, (128) Billy, (129) Nelly, (130) Henry, (131) old Patty, being in all one hundred and thirty-one in number; to have and to hold the said negro slaves and issue of females to his and their own separate use and behoof:

Provided always, and these presents are upon this express condition, That if the said Phineas M. Mightingale, his heirs, executors, or administrators, shall well and truly pay unto the said Charles Spalding, his heirs, executors, administrators, or assigns, each and ·ry instalment of the said debt of one hundred thousand dollars ·e same shall become due, namely, ten thousand ($10,000) dol·e year after the execution of these presents, together with

lawful interest on the same at the rate of seven per centum per annum; ten thousand ($10,000) dollars two years after the execution of these presents, with the lawful interest on the same at the rate of seven per centum per annum; fifteen thousand ($15,000) dollars three years after the execution of these presents, with the lawful interest on the same at the rate of seven per centum per annum;
127 fifteen thousand ($15,000) dollars four years after the execution thereof, with the lawful interest thereon at the rate of seven per centum per annum; twenty thousand ($20,000) dollars five years after the execution of these presents, with the lawful interest thereon at the rate of seven per centum per annum; fifteen thousand ($15,000) dollars six years after the execution of these presents, together with the lawful interest thereon at the rate of seven per centum per annum; and, lastly, fifteen thousand ($15,000) dollars seven years after the execution of these presents, together with the lawful interest thereon at the rate of seven per centum per annum, all such payments being in accordance with the seven above-recited bonds from Phineas M. Nightingale aforesaid to Charles Spalding aforesaid, that then these presents and the estate hereby granted shall cease, determine, and be void; and if default shall be made in all or any one of the aforesaid partial payments or instalments as agreed upon by the said Phineas M. Nightingale with the said Charles Spalding, it shall be lawful for the said Charles Spalding, his heirs, executors, administrators, and
128 assigns, to enter into and upon all and singular the tract of land and negroes hereby granted, or intended so to be, and to foreclose this present mortgage.

In witness whereof the said Phineas M. Nightingale hath hereunto set his hand and affixed his seal on the day and year first above written.

P. M. NIGHTINGALE. [SEAL.]

Signed, sealed, and delivered in the presence of us—
HAMILTON COUPER.
JULIAN HARTRIDGE,
Notary Public, Chatham Co.

The words "said," "previously," & "tract of land and negroes" being first interlined.

McINTOSH COUNTY:

SUPERIOR COURT, CLERK'S OFFICE.

Recorded in Book K, folios 358, 359, 360, this second day of February, 1855.

ARMAND LEFILS, *Clerk.*

Entry of Satisfaction Across Face of Mortgage.

January 9th, 1873.—Satisfied, say Jackson, Lawton & Basinger, attorneys for estate of E. Molyneux, deceased.

In presence of—
J. LAWTON WHATLEY,
Not. Pub. C. C., Geo.

129 *Transfer of Foregoing Mortgage from Chas. Spalding to E. Molyneux.*

GEORGIA, *Chatham County:*

This indenture of two parts, made this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and fifty-six, between Charles Spalding, of the county of McIntosh, in the State aforesaid, and Edmund Molyneux, of the county of Chatham, in the State aforesaid, witnesseth: That the said Charles Spalding, for and in consideration of the sum of one hundred thousand dollars to him in hand paid by the said Edmund Molyneux at and before the ensealing of these presents, the receipt whereof is hereby fully acknowledged, hath granted, bargained, sold, assigned, and set over, and doth by these presents grant, bargain, sell, assign, transfer, and set over, unto the said Edmund Molyneux all the estate, title, and interest now vested in and being in the said Charles Spalding by virtue of the within deed of mortgage from Phineas M. Nightingale to Charles Spalding aforesaid, together with the seven certain bonds from Phineas M. Nightingale to Charles Spalding aforesaid, in the within deed of mortgage more particularly set forth and described; to have and to hold
130 the said bargained mortgage and bonds as fully as and under the same conditions as the said Charles Spalding now doth the said bonds and mortgage hold.

In witness whereof the said Charles Spalding hath hereunto set his hand and seal the day and year first above written.

CHARLES SPALDING. [SEAL.]

Signed, sealed, and delivered in the presence of—
HENRY CHARLES MACKENZIE.
STEPHEN HILLS.
HAMILTON COUPER,
Notary Public, Chatham County, Georgia.

STATE OF GEORGIA, *Chatham County:*

Whereas the fourth bond referred to in the within mortgage has been assigned, transferred, conveyed, and set over by me to Robert Stafford, his heirs and assigns, without recourse on me in law or equity: Now this indenture witnesseth: That in consideration thereof I have granted, bargained, sold, assigned, and set over, and by these presents do grant, bargain, sell, assign, and set over,
131 unto the said Robert Stafford, his heirs and assigns, so much of the estate, title, and interest as was vested in me on the

written mortgaged premises to secure the payment of the aforesaid bond number four (4), reserving all other estate, title, and interest to the within mortgaged premises, to secure the payment of the other bonds therein mentioned and contained.

In witness whereof I have hereunto set my hand and seal this twentieth day of April, A. D. 1858.

——— ———. [SEAL.]

Signed, sealed, and delivered in presence of—
ROBERT GRANT.
JOHN E. WARD,
Notary Public.

Interrogatories for E. A. McWhorter and F. M. Adams, Witnesses for Complainant.

In Fifth Circuit Court of U. S. for So. Dist. of Ga., E. D. In Equity.

W. H. M. SANGER, Compl't, and WM. NIGHTINGALE *et al.*, Def'ts.

Interrogatories to be propounded to E. A. McWhorter and
132 F. M. Adams, of Camden county, in said district, both of whom are material witnesses for the complainant.

Intg. 1, for both witnesses. Please state your age, occupation, residence, and if you are acquainted with the parties to this suit.

Intg. 2, for both witnesses. State whether or no you ever knew in his lifetime Phineas Miller Nightingale; and, if so, state where he lived and how long you knew him. If you state that he ever lived in Camden county and at Dunginess, on Cumberland Island, please state for how long he lived there and if he exercised rights of ownership over said place.

Intg. 3, for both witnesses. State whether or no you ever examined carefully and thoroughly the records of the court of ordinary in Camden county, and if from said records you can learn anything of the will of one Mrs. Louisa C. Shaw. If yea, state fully and particularly everything which said records disclose relating to said will,
and attach to your answers a true copy of each and every
133 word & line to be gathered from such records concerning said will, and state the book or books and the date or dates of such record.

Intg. 4, for both witnesses. State whether or no the original or a copy of said will of Louisa C. Shaw is of record or on file in the office of the ordinary of Camden county. If you say there is neither an original or copy of said will of record or on file in said ordinary's office, please state fully why said papers are not in said office. State if there is any book of record of said court lost or mutilated; and, if so, state fully all about this and what book or books are lost.

Intg. 5, for both witnesses. State whether or not you or either of you have ever before examined the records of the said court of ordinary in reference to this will of Mrs. Louisa C. Shaw; and, if so, state when, at whose instance or request, and with what result.

Intg. 6, for both witnesses. State whether or no you or
134 either of you ever saw the said will or a copy of it; and, if yea, state fully the contents of said will, in so far as it devised the property of "Duingeness" to said P. M. Nightingale. Did or not the language of said will give to said P. M. Nightingale an absolute estate or a life estate only, with remainder to his children or any other person?

Intg. 7, for all the witnesses. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in the cause? If yea, set forth the same fully and at large in your answer.

TOMPKINS & DENMARK,
W. A. WAY,
Sol's for Compl't.

Acknowledgment of Service.

Savannah, 22d March, 1881.—Service of a copy of the within interrogatories acknowledged, the original to be filed in the clerk's office of the U. S. circuit court at Savannah; but, having given
135 notice of our desire that the evidence in the cause may be taken orally, as provided in the 67th equity rule, we object to the issuing of any commission on these interrogatories without our consent.

LESTER & REVENAL,
JACKSON, LAWTON & BASINGER,
By WM. S. BASINGER,
Defts' Sol's.

Endorsements: In the fifth circuit court of [the] U. S. for southern district of Georgia, eastern division. In equity. W. H. M. Sanger, compl't, and Wm. Nightingale *et al.*, def'ts. Interrogatories for E. A. McWhorter and F. M. Adams. Filed this 22d day of March, 1881. W. M. Heyward, deputy clerk.

136 *Objections by Defendants and Cross-Interrogatories for Same Witnesses.*

In U. S. Circuit Court for East. Div., So. Dist. of Georgia. In Equity

W. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts.

In the matter of interrogatories for E. A. McWhorter and F. M. Adams, alleged to be material witnesses for the complainant in the above-entitled cause, filed in the clerk's office by the complainant—

The defendants object to all the said interrogatories as wholly irrelevant to the issue.

They object, more particularly, to the 3d and 4th interrogatories,

on the ground that the evidence thereby sought is not lawful evidence of the facts proposed to be proved.

They also object, more particularly, to the 6th interrogatory, not only for the same reason that they object to the 3d and 4th, but for the additional reason that it seeks the opinion of the witnesses as to the interpretation of the will therein referred to.

They object, also, to the 7th interrogatory because it is not
137 sufficiently explicit to inform them of the nature of the testimony sought and expected thereunder.

Subject to the foregoing objections, the defendants propounded the following cross-interrogatory, viz:

If you say you saw the will of Mrs. Shaw in the ordinary's office, please state if it was the original will and how you knew it was the original will. How long is it since you saw it?

The defendants consent that the evidence of the above-named witnesses be taken by commission upon the interrogatories filed and the foregoing cross-interrogatories, subject to the objections above stated and without waiving their right to an oral examination of other witnesses, in pursuance of the notice heretofore given to the complainant under the 67th equity rule.

LESTER & RAVENEL,
JACKSON, LAWTON & BASINGER,
WM. S. BASINGER,
Def'ts' Sol'rs.

138 Endorsements: In the U. S. circuit court for eastern division, southern district of Georgia. W. H. M. Sanger, compl't, and Wm. Nightingale *et al.*, def'ts. In equity. Objections to compl't's interrogatories for McWhorter & Adams, and cross-interrogatories. Filed April 1st, 1881. W. P. Ward, clerk.

Commission to Examine Witnesses.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

In the Circuit Court of the United States for the Southern District of Georgia.

To Joseph Shepherd, John Tompkins, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed, and by the presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein W. H. M. Sanger is compl't and Wm. Nightingale *et al.*
[are] def'ts, as well on the part of the said defendants as on
139 the part of the said complainants, or of either of them, and it is required of you (or any two or more of you) that, on certain days and at certain places by you to be appointed for that purpose, you do cause the said E. A. McWhorter & F. M. Adams, wit-

nesses on the part of the compl't, to come before you, and then and there examine them upon the said interrogatories on their corporal oaths just taken before you (or any two or more of you) on the holy evangelists, and that you do take such their examinations and reduce them into writing, and when you shall have so taken them you are to send the same to the clerk of the 5th circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed, and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the holy evangelists; and it is further required of you that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witnesses to be examined by virtue of these presents shall, before
140 he or they be permitted to act as clerk or clerks as aforesaid, or be present at such an examination, severally take the oath last specified in the said schedule annexed, and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the holy evangelists.

Witness the Honorable Morrison R. Waite, Ch'f Justice of the Superior Court of the United States, at the city of Savannah, this 4th day of April, in the year of our Lord one thousand eight hundred and eighty-one, and [the] 105th year of American Independence.

[Seal of the U. S. Circuit Court, Georgia.]

WM. M. HEYWARD,
Dep. Cl'k.

SCHEDULE.

The Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of
141 all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the said commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of said court: So help you God.

JOSEPH SHEPARD,
JOHN TOMPKINS,
Commissioners.

Subscribed and sworn to before each other this thirteenth day of April, A. D. 1881.

JOSEPH SHEPARD, *Com'r.*
JOHN TOMPKINS, *Com'r.*

The Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe, and engross the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of
142 them, named in the commission hereunto annexed, so far forth as you are directed and employed by the said commissioners, or any of them, to take, write down, or engross the said depositions, or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever the contents of all or any of the depositions of the witnesses, or any of them, to be taken, written down, transcribed, or engrossed by you, or whereto you shall have recourse, or be in any wise privy, until publication shall pass by rule or order of the said court: So help you God.

JOHN J. RUDULPT.

Subscribed and sworn to before me this thirteenth day of April, A. D. 1881.

JOHN TOMPKINS, *Com'r.*

Deposition of F. M. Adams.

In the 5th Circuit Court of [the] U. S., Southern District of Georgia, E. D. In Equity.

W. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts.

Examinations and depositions of witnesses produced, sworn,
143 and examined by the undersigned commissioners in virtue of the annexed commission issuing out of the honorable the 5th circuit court of the United States for the southern district of Georgia, taken and reduced to writing in St. Mary's, Camden Co., Ga., on this the thirteenth day of April, 1881.

F. M. ADAMS, aged fifty-nine years, being duly sworn, answers and deposes as follows, to wit:

To the first direct interrogatory the witness answers and deposes as follows, to wit:

1. I am fifty-nine years old; ordinary of Camden county, Georgia; I live in St. Mary's, Georgia; I am not acquainted with W. H. M. Sanger; I am not acquainted with William Nightingale.

2. To the second direct interrogatory the witness, answering, saith: I did know Phineas Miller Nightingale in his lifetime; at that time he lived at Dungeness, Cumberland Island, Camden county, Georgia;

I knew him three or four years, and he lived at Dungeness during that time; he did exercise rights of ownership over said place.

144 3. To the third direct interrogatory the witness, answering, saith: I have examined carefully and thoroughly the record of the court of ordinary in Camden county in regard to the will of Mrs. Louisa C. Shaw, and have not learned or found anything in regard to the said will or the will itself either among the records or the papers filed, except that the index shews that the will was recorded in Book B of wills recorded, page 7; said index has no date.

4. To the fourth direct interrogatory the witness, answering, saith: Neither the original will nor a copy of the will of Louisa C. Shaw is of record or on file in the office of the ordinary of Camden county; said Book B of wills recorded has not been delivered to me while I have been ordinary of said county, nor is said book in said office, nor has it been there in my time, nor has the will itself nor a copy of the same, of my own knowledge. I am unable to say why said book and papers are not in my office. Book B of wills recorded has been lost. I was informed by Malcon A. Crawford, formerly

145 ordinary of said county, that said Book B was burned at Jeffersonton, formerly the county site of the court, not long after the Confederate war.

5. To the fifth direct interrogatory the witness, answering, saith: I examined the records of the court of ordinary in reference to the will of Mrs. Louisa C. Shaw in 1879, I believe, at, I think, the request of Judge Tompkins, and did not find the will itself nor any record nor copy thereof.

6. To the sixth direct interrogatory the witness, answering, saith: I have never seen said will or copy of it, nor the record of it.

7. To the seventh direct interrogatory the witness, answering, saith: I do not know, but I can set forth as heresay, that I have heard that Mrs. Louisa C. Shaw by her will devised Dungeness to Phineas M. Nightingale. I know nothing and can say nothing further in regard to this matter which may be a benefit or advantage to the parties at issue in the above cause.

1. To the cross-interrogatories the witness, answering,

146 saith: I never saw the original will of Mrs. Louisa C. Shaw nor any record or copy of it in the office of the ordinary of Camden county.

F. M. ADAMS, *Witness.*

Answered, subscribed, and sworn to before us, at St. Mary's, Camden county, Georgia, this thirteenth day of April, 1881.

JOSEPH SHEPARD,
JOHN TOMPKINS,
Commissioners.

Deposition of E. A. McWhorter.

E. A. McWHORTER, aged fifty years, being duly sworn, answers and deposes as follows, to wit:

1. To the first direct interrogatory the witness, answering, saith: I am fifty years old. I am now deputy clerk superior court of Cam-

den county. I live in St. Mary's, Georgia. I am not acquainted with any of the parties to this suit.

2. To the second direct interrogatory the witness, answering, saith: I met Mr. Phineas M. Nightingale in his lifetime in Brunswick, where he then lived, and was in his company about one-half hour, and have never seen him since that time, January, 1870. I have heard that he lived at Dungeness, but of my own knowledge know nothing of it.

3. To the third direct interrogatory the witness, answering, saith: I have examined the records of Camden county thoroughly.
147 I learned nothing from the records in reference to the will of Mrs. Louisa C. Shaw, except, from the index to wills, that it was recorded in Book B, page seven (7); exact copy from the index, to wit: "Shaw, Louisa C. B. 7." The index has no date of the record.

4. To the fourth direct interrogatory the witness, answering, saith: While I was ordinary of Camden county there was no original or copy of will of Mrs. Louisa C. Shaw of record or on file in the office of the ordinary of Camden county, and I know nothing of said will, except from the index of wills, as above stated, and know not why they were not in the office. Book B of wills was not in the office of the ordinary during my term of office. I was told that said book was burned at Jeffersonton, the former county site.

5. To the fifth direct interrogatory the witness, answering, saith: I did examine the records and papers of file in the ordinary's office, in reference to the will of Mrs. Louisa C. Shaw, in the winter of 1879 & 1880, at the instance and request of Judge Henry B.
148 Tompkins, without any result, except to find it indexed in index to wills.

6. To the sixth direct interrogatory the witness, answering, saith: I never saw the will or a copy of it, and know nothing of its contents.

7. To the seventh direct interrogatory the witness, answering, saith: I know nothing, neither can I set forth anything material to the subject of this examination, or the matter in question in this cause beneficial to either of the parties more than I have above said.

To the cross-interrogatory the witness, answering, saith: I never saw the original or a copy of the will of Mrs. Louisa C. Shaw, and know nothing of its contents.

E. A. McWHORTER, *Witness.*

Answered, subscribed, and sworn to before us, at St. Mary's, Camden county, Georgia, this thirteenth day [of] April, 1881.

JOSEPH SHEPARD,
JOHN TOMPKINS,
Commissioners.

149 *Endorsements on Envelope Containing Foregoing Depositions.*

No. 658. U. S. 5th circuit court, so. dist. of Georgia. W. H. M. Sanger *versus* Wm. Nightingale *et al.* In equity. Filed the 8th day

of April, A. D. 1880. Depositions of E. A. McWhorter & F. M. Adams, Camden Co., Ga., witnesses on part of compl't. To the clerk of the United States 5th circuit court, Savannah, Georgia. Postmark, St. Mary's, Geo., April 14th. Postage stamps, 16 cts. Signed across seal, Joseph Shepard, commissioner; John Tompkins, commissioner. Postmark, St. Mary's, Geo., April 14th.

I, Joseph Shepard, one of the commissioners in the within commission, do hereby certify that I have this day deposited in the post office at St. Mary's, Geo., the enclosed commission and depositions for transmission by mail to Savannah, Geo., this 13th day of April, 1881.

JOSEPH SHEPARD,
Commissioner.

Post office, St. Mary's.

Received this package from Joseph Shepard to be transmitted by mail to Savannah, Ga., this 13th day of April, 1881.

J. O. BESSENT,
Postmaster.

Post office, Savannah, Ga.

Received this package by due course of mail this 15th day of April, 1881.

L. McLAWS,
Per S. B. C.

Received by mail and filed this 15th day of April, 1881.

W. M. HEYWARD,
Deputy Clerk.

150 *Order to Open Depositions, &c.*

In U. S. Circuit Court, Southern District of Georgia. In Equity.

W. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def't's.

Upon motion of counsel for complainant, it is ordered that the depositions in the above-stated cause, now in court, may be opened and taken from court for examination by counsel for not more than 2 days.

In open court, 12 Dec., 18-2.

J. ERSKINE, *Judge.*

Endorsements: In U. S. circuit court, eastern division, southern district of Georgia. Wm. H. M. Sanger, compl't, and Wm. Nightingale *et al.*, def'ts. Order to open depositions, &c. Filed this 12th day [of] December, 1882. W. P. Ward, clerk.

151 *Mortgage from P. M. Nightingale to Legare & Colcock.*

STATE OF GEORGIA:

To all whom these presents may concern I, P. M. Nightingale, in the State aforesaid, send greeting:

Whereas I, the said P. M. Nightingale, in and by certain bond or obligation, bearing date the same day with these presents, stand firmly held and bound unto James Legare and John Colcock, factors, doing business in Charleston, South Carolina, under the firm [name] of Legare and Colcock, in the penal sum of forty thousand dollars, conditioned for the performance of certain covenants and agreements therein recited, as in and by the said bond and condition thereof, reference being thereunto had, will more fully appear:

Now, know all men that I, the said P. M. Nightingale, in consideration of the said debts and sum of money aforesaid, and for the better securing the payment thereof to the said Legare and Colcock according to the condition of the said bond, and also in consideration of the further sum of three dollars to me, the said P. M. Nightingale, in hand well and truly paid by the said Legare and
152 Colcock at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said Legare and Colcock, their heirs and assigns, all that tract or parcel of land, being the southern portion of Cumberland Island, in the county of Camden, in the State of Georgia, and known as Dungeness, bounded as follows: On the north by land known as the Spring's tract, belonging to Robert Stafford; on the east by the Atlantic Ocean; on the south by Cumberland Sound, and on the west by Cumberland river, containing three thousand acres, more or less; also the following negro slaves: Brown, a negro man slave, and Charlotte, his wife, with their four children, Clarinda, Ishmael, Maria, and Rachel; also Isaac, Saul, Jake, Henrietta, Ersuline, John Walker, Friday, Tena, Jane, John, Jane, Joe, Nelly, Nanny, Simms, Frank, and Alonzo, together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining:

To have and to hold all and singular the said premises
153 unto the said Legare and Colcock, their heirs and assigns, forever. And I, the said P. M. Nightingale, do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said Legare and Colcock, their heirs and assigns, from and against myself, my heirs, executors, administrators, and assigns, and all other persons whomsoever lawfully claiming or to claim the same, or any part thereof: Provided always, nevertheless, and it is the true intent and meaning of the parties to these presents, That if I, the said P. M. Nightingale, do and shall well and truly pay, or cause to be paid, unto the said Legare and Colcock the said debt or sum of money aforesaid, with interest thereon, if any shall be due, according to

the true intent and meaning of the said bond and condition thereunder written, then this deed of bargain and sale shall cease, determine, and be utterly null and void; otherwise it shall remain in full force and virtue. And it is agreed by and between the said parties that I, the said P. M. Nightingale, am to hold and enjoy the said premises until default of payment shall be made.

154 Witness my hand and seal this thirtieth day of December, in the year of our Lord one thousand eight hundred and fifty-six, and in the eighty-first year of the sovereignty and Independence of the United States of America.

P. M. NIGHTINGALE. [SEAL.]

Signed, sealed, and delivered in the presence of—
HENRY S. BACON.
ELBERT M. BACON,
Notary Public.

Recorded & ex'd Jan'r. 18th, 1857.

WM. W. GOWEN, *Clerk.*

GEORGIA, *Camden County:*

CLERK'S OFFICE,
SUPERIOR COURT OF SAID COUNTY.

This certifies that the within and foregoing is a true and correct copy of mortgage from P. M. Nightingale to Legare and Colcock, as of record in this office in Book "P," pages 425 & 426.

Given under my hand and seal of office this 10th day of December, 1879.

[Seal Superior Court, Camden County, Georgia.]

E. A. McWHORTER,
Deputy Clerk.

155 *Certificate from the Clerk of Camden County.*

GEORGIA, *Camden County:*

CLERK'S OFFICE,
SUPERIOR COURT OF SAID COUNTY.

I hereby certify that, after due and thorough search of the records, there appears no transfer or deed of the property called Dungeness conveyed to P. M. Nightingale by Margaret Greene under the date of November 9, 1853, from P. M. Nightingale to any one since the date of the above-mentioned deed from Margaret Greene except the deed from P. M. Nightingale to Mrs. Eliza H. Molyneux, dated 21st day of July, 1870, and of record in the office in Book "Q," pages 328 & 329, and recorded June 3rd, 1871.

Given under my hand and seal of office this 10th December, 1879.

[Seal Superior Court, Camden County, Georgia.]

E. A. McWHORTER,
Deputy Clerk.

156 *Certified Copy of the Will of P. M. Nightingale.*

STATE OF GEORGIA, *Glynn County:*

I, Phineas Miller Nightingale, of Cumberland Island, county of Camden, in the State of Georgia, being of sound mind and disposing memory, do make, publish, and declare this my last will and testament, hereby revoking and annulling all wills heretofore at any time made by me.

First. I give, devise, and bequeath all of my estate, real and personal and mixed, of whatsoever kind and wheresoever situate, including the estate and property which I took under the will of my late aunt, Mrs. Louisa C. Shaw, subject, however, to the provisions of the second clause of this my will, to my wife, Mary K. Nightingale, and the child or children whom I may leave living at the time of my death, equally to be divided between them, share and share alike, as tenants in common, and not as joint tenants, to them and their heirs forever, the child or children of a deceased child to stand in the place of and take the share to which the parent
157 would have been entitled if in life; but it is my will that if any one or more of my children should set up an exclusive claim to that portion of my estate which I took under the will of my said aunt, Mrs. Louisa C. Shaw, to the exclusion of my said wife, Mary K. Nightingale, from an equal and proportionate share thereof, as is hereinbefore directed, and should such claim, if made, be judicially established to the whole or any part of said estate, then and in such event I revoke the desire hereinbefore declared in favor of my said children, and I give, devise, and bequeath all of my estate and property, real, personal, and mixed, wheresoever situate, unto my said wife, Mary K. Nightingale, to her & her heirs, forever.

Second. It is my will and I direct that my estate shall be kept together undivided untill my youngest shall attain the age of twenty-five years, and direct my executors to manage my estate in such manner as may be most beneficial to it and best calculated to free it from all debt and incumbrances. And I further authorize
158 them to sell or dispose of any portion or the whole of my estate, and to purchase for it any other property, real or personal, they may deem most advantageous, and generally to control and manage its affairs as a prudent and careful man would his own; and to accomplish this purpose I give to them every necessary power and authority; and I further direct my executors, untill the debts of my estate are paid in full, to pay to my said wife, if alive, or if not to whoever may have the charge of my family, such portion of the income of my said estate as in their judgment shall be proper for the support of my family, and after the payment of all of the debts and incumbrances I direct the net income of my estate shall be equally divided between my wife and children until the period appointed, as aforesaid, for the general division of my estate.

And, lastly, I nominate and appoint my said wife, Mary K. Nightingale, my daughter, Louisa G., & my sons, John K. and William Nightingale, executrixes and executors of this my last will and testament.

In witness whereof I have hereunto set my hand and seal, *of* Brunswick, this ninth day of September, in the year of our Lord eight[een] hundred and sixty-nine.

P. M. NIGHTINGALE.

Signed, sealed, published, and declared by the said Phineas Miller Nightingale as and for his last will and testament in the presence of us, who, at his request and in his presence, have hereunto set our names as witnesses.

H. A. KENRICK.
WM. W. WATKINS.
W. H. BERRIE.
WM. BARKULLOO,
Notary Public, Glynn County, Ga.

STATE OF GEORGIA, *County of Glynn:*

Before me, W. H. Berrie, ordinary of said county, came in person William Nightingale, one of the executors of the last will and testament of Phineas M. Nightingale, deceased, late of said county, and also H. A. Kenrick, one of the witnesses to said will, who, being duly sworn, deposes and saith he saw the said Phineas M. Nightingale sign, seal, and publish and declare the said instrument (the
160 foregoing instrument) as his last will and testament, voluntarily and freely, without compulsion, and that he signed said will as a witness and saw Wm. W. Watkins, Wm. H. Berrie, and Wm. Barkuloo do so likewise in the presence of Phineas M. Nightingale and each other.

A. A. KENRICK.

Sworn to and subscribed before me this 12th January, 1874.

WM. H. BERRIE,
Ordinary G. C.

STATE OF GEORGIA, *Glynn County:*

By Wm. H. Berrie, ordinary of said county, to all to whom these presents shall come, Greeting:

Know ye that on the 12th day of January, 1874, the will of Phineas M. Nightingale, deceased, was exhibited in open court, having been previously filed in my office, and in proper form of law, proved and ordered to be recorded, a copy of which is hereto attached; and on the first Monday in February, 1874, administration of the personal estate of said deceased was granted to William Nightingale, one of the executors of said will, and said Wil-
161 liam Nightingale, having taken the oath and performed all other requisites required by law, is by these presents legally authorized to administer the personal estate of said deceased conveyed by said will according to the tenor and effect thereof and according to law; and said executor is hereby required to make a true and perfect inventory and appraisement of the personal property of said deceased, and to make returns thereof according to law, and to render a true and correct account to the court of ordinary of his act-

ings and doings yearly touching said estate until the administration thereof is fully completed.

Given under my hand and seal this February 4th, 1874.

W. H. BERRIE,
Ordinary, Glynn Co.

STATE OF GEORGIA, *Glynn County:*

I, W. B. C. Coker, clerk of ordinary in and for said county, do hereby certify that the within and foregoing first four pages
162 contains a true, complete, and perfect copy of the last will and testament of Phineas M. Nightingale, deceased, as appears of record in Will Book "G," folios 426 and 427, and that page 5 contains a true and perfect copy of letters testamentary to William Nightingale granted, one of the executors named in said will, as appears of record in book of administrators and guardians, on folio 25, ordinary's record, Glynn county, Georgia.

Given under my hand and seal of office, at Brunswick, Georgia, this December the 10th, 1879.

[Seal Ordinary's Court, Glynn County.]

W. B. C. COKER,
Clerk Ordinary, G. C.

Ordinary's Court. Regular Term, Feb'y 2nd, 1874.

William Nightingale having produced the will of T. M. Nightingale, deceased, and it having been proven in common form, it is ordered that the will be admitted to record, and that the executor, Wm. Nightingale, have leave to qualify, and, upon so doing, that letters testamentary issue to him.

WM. H. BERRIE,
Ordinary, G. C., Ga.

163 STATE OF GEORGIA, *Glynn County:*

I, W. B. C. Coker, clerk of ordinary in and for the count of Glynn and said State, do hereby certify that the above order is a perfect and true copy, as appears of record in minute book of ordinary's office for said county.

Given under my hand and seal of office this the tenth day of December, 1879.

[Seal Ordinary's Court, Glynn County.]

W. B. C. COKER,
Clerk Ordinary, G. C., Georgia.

164 *Tax Fi. Fa. of April 29, 1872, and Sale of Camber's Island.*

STATE OF GEORGIA, *McIntosh County:*

To all and singular the sheriffs and constables of this State:

I command you that of the goods and chattels, if any [are] to be found, otherwise of the lands and tenements, of P. M. Nightingale you cause to be made the sum two hundred dollars — cents, the

amount of this State and county taxes for the year 1871, and the further sum of —— dollars — cents, the cost and charges incurred by the said P. M. Nightingale in consequence of the failure and non-payment of said taxes, and have the said money before me in Darien, in said county, on the 2nd day of April, in the year 1872, in payment of said taxes and costs.

Witness my hand and official signature this 29th day of February, 1872.

S. W. WILSON,
Tax Collector, McI. Co.

Endorsements: Levy & sheriff's return. In compliance with the within I have this day levied the same on all that land and
165 appurtenances thereto belonging in 271st dist., and known as Camber's Island, as the property of P. M. Nightingale, this Feb. 23rd, 1872. Jas. R. Bennett, sh-riff McI. C.

Tax *fi. fa.*, T. M. Nightingale:

Tax	200 00
Costs	85
	200 85

Camber's Island, 271st dist., McIntosh Co.:

Levy	2 00
Advertisement	5 00
	207 85

I have this day sold the within-described property, at public outcry to W. C. Wylly at and for the sum of ten dollars, he being the highest and best bidder, this April 2nd, 1872.

JAS. R. BENNETT, [L. S.]
Sheriff of McI. Co.

Sheriff's Deed Under Tax Fi. Fa. to W. C. Wylly.

STATE OF GEORGIA, *County of McIntosh:*

Whereas James R. Bennett, sheriff of said —, did, on — of the present year, levied a writ of *fieri facias* issued by S. W. Wilson, tax collector of McIntosh, against P. M. Nightingale for his tax on Camber's Island for [the] year 187–, and after due and lawful publication being made in the Savannah Republican, a paper published
in the city of Savannah, of the sale of so much of said
166 land as would be sufficient to satisfy said tax *fi. fa.*, and all cost, said sheriff proceeded to the sale of same on the first Tuesday in ——, the same being the day of sale, according to law, when fifty *dollars* was put —, for which no bid was made; one hundred acres was then offered, for which no bid was made; five hundred acres was then offered, for which no bid was made; the entire

tract was then offered, when, W. C. Wylly, being the highest and best bidder at the sum of ten dollars, it was knocked off to him:

Now, this indenture, made and entered into this ——, A. D. 187–, between James R. Bennett, sheriff of the county aforesaid, of the one part, and W. C. Wylly, of the same place, of the other part, witnesseth:

That for and in consideration of the sum of ten dollars to him cash in hand paid by him, the said W. C. Wylly, at and before the signing and sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said James R. Bennett, sheriff as aforesaid, has granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto him, the said W. C. Wylly, his
167 heirs, executors, administrators, and assigns, all the right, title, and interest of the said P. M. Nightingale in said tract of land of which P. M. Nightingale was seized and possessed of, or in and to the same, with all the rights, members, and appurtenances thereunto belonging or in anywise appertaining, to his and their own proper use, benefit, and behoof, forever, in fee-simple.

In witness whereof the said James R. Bennett, sheriff as aforesaid, hath hereunto set his hand and affixed his seal the day and year above written.

JAMES R. BENNETT, [L. S.]
Sheriff, McI. County.

Signed, sealed, and delivered in presence of—
WM. J. DUNWODY.
EDW. E. HOWARD,
C. S. C., McI. C., Ga.

Endorsement: Sheriff's deed under tax *fi. fa.* to W. C. Wylly. Consideration, $10.00; title, $3.50.

168 *Tax Fi. Fa. of October* 22, 1872.

STATE OF GEORGIA, *McIntosh County:*

To all and singular the sheriffs and constables of this State:

I command you that of the goods and chattels, if any be found, otherwise of the lands and tenements, of W. C. Wylly you cause to be made the sum of one hundred and forty-eight dollars — cents, the amount of this State and county taxes for the year 1872, and the further sum of —— dollars — cents, the costs and charges incurred by the said W. C. Wylly in consequence of the failure and non-payment of said taxes, and have the said money before me in Darien, in said county, on the 3rd day of December, in the year 1872, in payment of said taxes and costs.

Witness my hand and official signature this 22d day of October, 1872.

S. W. WILSON,
Tax Collector, McI. C.

Endorsements:

Tax *fi. fa.*, W. C. Wylly tax	148 00
Costs	2 50
	150 50

Camber's Island. Received the within list of tax and costs this October 28, 1872. S. W. Wilson, per Jas. R. Bennett, sheriff, McI. Co.

169 *Quit-Claim Deed from Wm. C. Wylly to Wm. Nightingale.*

STATE OF GEORGIA, *McIntosh County:*

Know all men by these presents that I, William C. Wylly, for and in consideration of the sum of twelve dollars to me in hand paid by William Nightingale at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, *hath* granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said William Nightingale all my right, title, and interest which I hold or possess by virtue of tax sale or from any other source in and to that certain tract or parcel of land situated in the Altamaha river, in said county, and known as Camber's Island, said tract of land having been this day sold at sheriff's sale as the property of Phineas M. Nightingale; to have and to hold said tract or parcel of land to him, the said William Nightingale, and to his heirs and assigns, in fee-simple.

In witness whereof I have hereto set my hand and seal
170 this seventh day of January, in the year eighteen hundred and seventy-three.

WILLIAM C. WYLLY. [SEAL.]

Signed, sealed, and delivered in presence of—
THOS. WHEELER.
W. ROBT GIGNILLIAT,
Not. Pub., McI. C., Geo.

Recorded January 7th, 1873, in Book M, folio 222.
EDW. E. HOWARD,
Clk Sup'r Ct, McI. Co.

Endorsements: Quit-claim deed from Wm. C. Wylly to William Nightingale. Consideration, $12.00; clerk's fees, $1.25.

171 *Interrogatories for A. R. Lawton and W. S. Basinger, Witnesses for Complainant.*

In 5th Circuit Court of U. S. for So. Dist. of Ga. In Equity.

W. H. M. SANGER, Compl't,
and
WILLIAM NIGHTINGALE *et als.*, Def'ts.

Interrogatories to be propounded to Henry R. Jackson, Al'x. R. Lawton, and William S. Basinger, who are material witnesses for complainant.

Intg. 1, for all the witnesses. Do you know the parties to the above

stated cause? Where do you reside and what is your occupation? If you say that you are attorneys & solicitors, state if you were ever associated together in the practice of the law; and, if so, under what firm name, who composed the firm, and for how long were you so associated.

Intg. 2, for all the witnesses. State whether or not you or either of you were ever the legal advisers and counsel of Mr. Edmund Molyneux in his lifetime, and of his heirs or legal representatives after his death; if yea, state who of his heirs or legal rep-
172 resentatives you so advised, and for how long a period and upon what matter.

Intg. 3, for all the witnesses. State whether or not you knew one Phineas Miller Nightingale in his lifetime; and, if yea, state whether or not you or either of you, representing the estate or representing the heirs or legal representatives of Edmund Molyneux, ever conducted any settlement with said Nightingale concerning a certain debt due upon a mortgage given by said P. M. Nightingale to Charles Spalding, and by him transferred to said E. Molyneux; if yea, state fully and particularly all about such settlement, its terms, condition, and final results, and whether or no the said mortgage, by the terms of such settlement, was not deemed and considered by all parties fully "settled" and discharged, so far as it was an evidence of debt, in favor of the heirs or representatives of the estate of said Molyneux. State whether or no there was any assignment or transfer or sale of said mortgage by the heirs or representatives of said Molyneux to said P. M. Nightingale for himself,
173 or as trustee or agent for any other person or persons, or if the said mortgage was not, after being marked settled or satisfied (or something equivalent thereto), simply turned over to said P. M. Nightingale under an agreement or settlement, which was taken and considered as a satisfaction and payment by said P. M. Nightingale of said mortgage.

Intg. 4, to all the witnesses. If you or either of you state that there was some agreement or bargain or contract in reference to said mortgage at the time it was marked settled or satisfied and turned over to said P. M. Nightingale, other than as pointed out in the 3d intg., then please state fully and particularly what such agreement was, and who, if any one, derived or was intended to derive any interest in or control over said mortgage at the time of or after its transfer to said P. M. Nightingale. State whether or not if you or either of you know or were informed or suspected, when said mortgage was so marked settled or satisfied and turned over to P. M. Night-
174 ingale, that there was then transferred or assigned or reserved, or intended to be reserved, to any person or persons any interest, claim, right, or demand in said mortgage or the foreclosure suit then in progress.

Intg. 5th, to all the witnesses. State whether or not, when the said mortgage so transferred to said P. M. Nightingale and marked settled or satisfied, the said P. M. Nightingale informed you or either of you, or if you had any reason to believe or to suspect, that the defendants in this bill, the children of said P. M. Nightingale, were

his creditors in any sense, or if they or either of them had advanced any money or goods or property to enable him to pay off and settle said mortgage, or if it was understood and agreed or in contemplation by the parties to such settlement that these defendants or either of them were to derive any right or interest in said mortgage by reason of said P. M. Nightingale having paid it off and settled it with property or the interest in property belonging to said defendants.

175 Intg. 6, to all the witnesses. What was the consideration given by said P. M. Nightingale to Mrs. E. H. Molyneux for the settlement and relinquishment of the said mortgage, and was such consideration in full satisfaction and compromise of all that was secured to be paid by said P. M. Nightingale under said mortgage?

Intg. 7, to all the witnesses. State whether or not the following deeds were drawn in y'r office and under your direction and supervision, to wit: Deed from P. M. Nightingale to Mrs. Eliza H. Molyneux upon consideration of $25,000, executed 21st day of July, 1870, and conveying "Dungeness;" deed from Louisa G. Nightingale, Mary R. Troup, & others (all children of P. M. Nightingale) to George H. Johnston, adm'r, &c., of E. Molyneux, upon consideration of $51,250.00, executed the — day of ——, 1871, and transfer and assignment of a certain mortgage on Camber's Island, &c., and conveying by quit-claim the interest of said granters in "Dungeness;"

176 if yea, state whether or not at the time the deed to Mrs. Molyneux was drawn the said mortgage was then and there, or about that time, marked settled or satisfied and turned over to P. M. Nightingale; state also whether or not the said mortgage was in the possession, power, custody, or control of said Geo. H. Johnston, adm'r, &c., at the time said last-named deed was drawn, and whether or not said Johnston ever knew anything about said deed—ever accepted it or had it in his possession actually or constructively; and state in whose possession such deed actually was from the said — day of ——, 1871, up to this time, or in whose possession it has been from time to time since it was written and signed, and in whose handwriting it is, and by whose direction was it sent and who sent it to St. Mary's, in Camden county, to be first recorded on 27 Sept'r, 1878.

Intg. 8, to all the witnesses. State whether or not you, or either of you, ever knew or had cause to know about the issuing of the *fi. fa.* upon the foreclosure of the mortgage in McIntosh superior court in the name of Charles Spalding, for use, &c., *v.* P. M. Night-

177 ingale, the levy thereunder upon Camber's Island, and the sale and purchase, as set up in the answer of defendants. Did you, or either of you, after said mortgage had been turned over to P. M. Nightingale, engage as attorney or otherwise in the proceedings which resulted in taking the rule absolute, issuing the *fi. fa.*, and the levy and sale of the said island under it? What connection did you have in the taking or accepting of the said promissory note for $30,000.00 given by Wm. Nightingale and spoken of in defendants' answer? If any, state fully and particularly what you did, said, or

advised in relation thereto, and what has become of said note, and has any part of it been paid. Attach a copy of it to your answer.

Intg. 9, to all the witnesses. State whether or not W. Rob't Gignilliat, ex'r, became associated with your firm in said foreclosure of mortgage in McIntosh county. Was it before or after the arrangement with P. M. Nightingale concerning it, and the marking it satisfied or settled and transferring it and the bonds to him?

178 Intg. 10, to all the witnesses. When this settlement with and transfer of the mortgage to P. M. Nightingale was effected had the rule absolute on foreclosure been then obtained; and, if not, who afterwards advised and obtained such rule absolute? Please append to your answers an abstract from your books concerning this foreclosure suit showing all the entries and the dates connected with the case.

Intg. 11, to all the witnesses. State whether or not, before the drawing of the aforementioned deed from Louisa G. Nightingale & others to Geo. H. Johnston, adm'r, &c., or at any other time, you or either of you were shown, or told of, or consulted about the legal meaning and effect of the will of one Mrs. Louisa C. Shaw; and, if yea, state when, where, and by whom you were so consulted. Did you, or either of you, ever see a copy of said will, or the original of it, or an extract from it, and what opinion did you give as to the right and title of said P. M. Nightingale under said will to the property on Cumberland Island, in Camden Co., Ga., known

179 as "Dungeness?" Do you now know where is such will, or a copy of it?

Intg. 12, to Gen'l A. R. Lawton. State whether or not the copy of a letter annexed to the bill as Exhibit "G" and purporting to be a copy of a letter written by you on 29th January, 1873, to Col. Charles Spalding is a true and correct copy of what you did write, as shown by your letter-book, and as shown by the original now in possession of Col. Spalding. State whether or not the statement of facts set forth in said Exhibit "G" are true, and whether or no you, as legal adviser and attorney of the Molyneux estate, did turn over and deliver to P. M. Nightingale the said Spalding mortgage after it had been "absolutely satisfied" by said P. M. Nightingale in favor of the Molyneux estate, its heirs and legal representatives. According to your books, or letters, or recollection, at what date was this mortgage so satisfied and turned over to P. M. Nightingale?

Intg. 13, for all the witnesses. State whether or not you, or either of you, were the attorneys for W. Cumming & Co., bankers of

180 Savannah, in the business and negociations which had that firm to advance money to William Nightingale to enable him to run and operate said Camber's Island as a rice plantation since the death of P. M. Nightingale. If yea, please state fully and particularly all about such transactions, and if you know or were told, at or before said advances were made, that said William Nightingale held, or affected to hold, said island as trustee for his brothers and sisters, the defendants in this bill; or, if said defendants, other than said Wm. Nightingale, had or made any claims to said island as *cestui que trusts* or otherwise, when said William Nightingale &

wife executed and delivered to said W. Cumming & Co. the deed to said island dated 29 Jan'y, 1874, and a copy of which is annexed to the bill as Exhibit "K."

Intg. 14, to all the witnesses. If you, or either of you, say that you, or either of you, knew that said William Nightingale did hold, or claim to hold, said Camber's Island in trust when he received the said advances from W. Cumming & Co., then why did
181 you advise or permit your clients, W. Cumming & Co., to make advances to and receive a security from said William Nightingale as the real and *bona fide* owner of Camber's Island when you knew it was vested in him only as a trustee?

Intg. 15, to all the witnesses. Were not the advances made to said Wm. Nightingale by W. Cumming & Co. and the said deed to Camber's Island taken from him & his wife under §§ 1969, *et seq.*, of the code of Ga., and was not there also given by said W. Cumming & Co. to said Nightingale a bond or obligation to reconvey said Camber's Island, and was not such reconveyance made by deed from Mrs. H. V. Cumming & others to William Nightingale on 18 Sept'b'r, 1879, and annexed to the bill as Exhibit "L," and this after a judgment in sup'r court of McIntosh county against said Wm. Nightingale on notes he had given for the advances made?

Intg. 16, to all the witnesses. State whether or not if you, or either of you, had known or had cause to believe that the said Wil-
182 liam Nightingale was trustee, as is alleged in the answer of defendants, would you have advised or permitted your clients, W. Cumming & Co., to advance large sums of money to him as the real owner of Camber's Island, or would you have sought or advised the securing of said advances under § 1969, *et seq.*, of the code of Ga. and the obtaining judg't against Wm. Nightingale alone in McIntosh sup'r court, or would you have proceeded under §§ 3377 & 3378 of the code to subject Camber's Island as a trust estate for the payment of the advances made for its use and benefit?

Intg. 17, for all the witnesses. When your firm of Jackson, Lawton & Basinger received a note payable to you for $30,000.00, made by Wm. Nightingale as the purchaser of Camber's Island, in what right, for what purpose, and on what account did you receive said note? Were you or either of you consulted about it before it was made and delivered, and did you or not undertake to constitute yourselves trustees or to accept as trustees said note for the use and benefit of the brothers and sisters of
183 William Nightingale; if yea, in what manner have you, or either of you, used and discharged such, to wit: Have you taken care that any of the profits derived to said Wm. Nightingale from the use and cultivation of said island were distributed to the use and enjoyment of your *cestui que trusts* or have you, or either of you, been called upon by said William Nightingale to contribute anything for the beneficiaries of this note by reason of any losses that he has made in — running and management of said island? If you say that you did not hold the note for $30,000.00 in the interest and for the use of the said brothers and sisters of William Nightingale, then please state for whom you held it, and whether or no you,

or either of you, have ever made any demand upon said William Nightingale for payment of said note or any part of it?

Intg. 18, for all the witnesses. State whether or not the firm of Jackson, Lawton & Basinger were ever employed for the defendants, or appeared for the defendants, in an ejectment suit
184 brought by Katie Sanger *vs.* William Nightingale in McIntosh sup'r court for the recovery of Camber's Island; said suit begun 16 March, 1878, and — dismissed 27 Nov., 1879; if yea, state whether or not, during your connection with said suit, you, or either of you, ever heard from said William Nightingale, or any one else, that he or his brothers and sisters, defendants in this bill, claimed that said Camber's Island was held by him in trust?

Intg. 19, for all the witnesses. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large, in your answer.

TOMPKINS & DENMARK,
W. A. WAY,
Sol's for Compl't.

N. B.—Gen'l Jackson need not answer if he knows nothing of any of the matters enquired of.

T. & D.

185 *Acknowledgment of Service.*

Savannah, March 22d, 1881.—Service of a copy of the within interrogatories acknowledged, the original to be filed in the clerk's office of U. S. circuit court at Savannah; but, having given notice of our desire that the evidence be taken orally, as provided in the 67th equity rule, we object to the issuing of any commission on these interrogatories without our consent.

LESTER & RAVENEL,
JACKSON, LAWTON & BASINGER,
By WM. S. BASINGER,
Def'ts' Sol'rs.

Endorsement: In U. S. circuit court for so. dist. of Ga. In equity. W. H. M. Sanger *versus* Wm. Nightingale *et als.* Interrogatories for Henry R. Jackson, A. R. Lawton, & W. S. Basinger. Filed this 22nd day of March, 1881. W. M. Heyward, dep. cl'k.

186 *Designation of Commissioners.*

In U. S. Circuit Court for So. Dist. of Geo. In Equity.

SANGER *vs.* NIGHTINGALE *et als.*

Let J. L. Whatley & Jno. Burroughs act as commissioners to take depositions of A. R. Lawton & Wm. S. Basinger in above-entitled case.

W. A. WAY,
Def'ts' Att'y.

Consent that a Commission be Issued for the Examination of the Same Witnesses.

In the U. S. Circuit Court for East. Div., So. Dist. of Georgia. In Equity.

W. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts.

In the matter of interrogatories for Henry R. Jackson, Alexander R. Lawton, and William S. Basinger, alleged to be material witnesses for the complainant in the above-entitled cause, filed
187 in the clerk's office by the complainant, the defendants, reserving their right to an oral examination of other witnesses in pursuance of the notice heretofore given to the complainant under the 67th equity rule, consent that a commission be issued for the examination of the witnesses above named, and decline to file any cross-interrogatories.

LESTER & RAVENEL,
JACKSON, LAWTON & BASINGER,
By WM. S. BASINGER,
Def'ts' Sol'rs.

Endorsements: In the U. S. circuit court for eastern division, southern district of Georgia. W. H. M. Sanger, compl't, and Wm. Nightingale *et al.*, def'ts. In equity. Consent that commission issue for the examination of H. R. Jackson, A. R. Lawton, and W. S. Basinger. Filed this 1st day of April, 1881. W. P. Ward, clerk.

188 *Commission to Examine Witnesses.*

UNITED STATES OF AMERICA, *Southern District of Georgia:*

In the Circuit Court of the United States for [the] Southern District of Georgia.

To J. L. Whatley and John W. Burroughs, Esquires, Greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed, and by the presents are vested (any two or more of you), with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, wherein W. H. M. Sanger is complainant and Wm. Nightingale *et al.* are defendants, as well on the part of the said defendants as on the part of the said complainants, or either of them, and it is required of you (or any two or more of you) that, on certain days and at certain places by you to be appointed for that purpose, you do cause
189 the said Henry R. Jackson, A. R. Lawton, and W. S. Basinger, witnesses on the part of the complainant, to come before you, and then and there examine them upon the said interrogatories on their corporal oaths first taken before you (or any two or more of you) on the holy evangelists, and that you do take such their examinations and re-

duce them into writing, and when you shall have so taken them you are to send the same to the clerk of the 5th circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, closed up and under your seals (or the seals of any two of you), distinctly and plainly set, together with the said interrogatories and this writ; and, further, that you and each of you, before you act in or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed, and full power is given you or either of you, jointly or severally, to administer such oath to the rest or any other of you upon the holy evangelists; and it is further required of you that all and every of the clerk or clerks employed in tak-
190 ing, writing, transcribing, or engrossing the deposition or depositions of witnesses to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid, or be present at such an examination, severally take the oath last specified in the said schedule annexed, and full power and authority is also given you or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the holy evangelists.

Witness the Honorable Morrison R. Waite, Ch'f Justice of the Supe*rior* Court of the United States, at the city of Savannah, this 4th day of April, in the year of our Lord one thousand eight hundred and eighty-one, and [the] 105th year of American Independence.

[Seal U. S. Circuit Court, Georgia.]

WM. M. HEYWARD,
Dep. Cl'k.

SCHEDULE.

The Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either
191 of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the said commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of said court: So help you God.

J. LAWTON WHATLEY.
JOHN W. BURROUGHS.

Subscribed and sworn to before me this 25th day of November, A. D. 1882.

JOHN W. BURROUGHS.
J. LAWTON WHATLEY.

Endorsements: In the circuit court of the United States
192 for the southern district of Georgia. W. H. M. Sanger *versus* Wm. Nightingale *et al.* Commission to examine witnesses on the part of the compl't for the examination of Henry R. Jackson, A. R. Lawton, & W. S. Basinger. Tompkins & Denmark, compl't's att'ys.

Deposition of William S. Basinger.

In the 5th Circuit Court of the U. S. for the Southern District of Georgia. In Equity.

W. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE *et al.*, Def'ts.

WILLIAM S. BASINGER, aged — years, being dúly sworn, answers and deposes as follows, to wit:

1. To the first interrogatory the witness says: I do not know the complainant. Of the defendants I know very well William Nightingale, John K. Nightingale, Henry Hull, Robert G. Cole, and Mrs. Cumming. The other defendants, the ladies of the Nightin-
193 gale family, I know slightly. I reside in Savannah, and am a practising attorney-at-law. I have been associated with Gen'l H. R. Jackson and Gen'l A. R. Lawton in the practice of the law under the firm name of Jackson, Lawson, & Basinger. We were so associated from Dec. 10, 1866, until Jan'y 1, 1881.

2. To the 2d interrogatory the witness says: We were not the counsel of the late Edmund Molyneux during his life, but were the counsel of his heirs and administrator after his death. The only one of his heirs whom I personally knew or have ever conferred with upon the business of the estate is Major Edmund Molyneux, his son. It is possible that I also occasionally advised Mr. George H. Johnston, the administrator of Mr. Molyneux's estate, but I have no recollection at this time of ever having done so. That business—the business of that estate—came to our office thro' Gen'l Lawton, who was more particularly their adviser, and tho' it was partnership business their conferences were always with him when he was in the office. The only business of the estate which I myself ever personally attended to, or could ever have conferred about
194 either with Major Molyneux or Mr. Johnston, until a time quite recent, consisted of the suits brought by creditors of several of the banks in Savannah, which had failed in consequence of the war, against Mr. Johnston, as administrator of Mr. Molyneux, who held stock in those banks at the time of his death, and the proceedings against Mr. P. M. Nightingale on his bonds and mortgage to Charles Spalding, assigned to Mr. Molyneux, mentioned in the bill in this cause. We represented the administrator in those suits, but, tho' it is possible that I conversed with Mr. Johnston and Major Molyneux about them, I do not recollect now that I ever did so, or that I ever did anything more in those matters than conduct

the cases in the courts. These relations of the firm of Jackson, Lawton & Basinger to the heirs of Mr. Molyneux commenced before the appointment of the administrator, and continued until the dissolution of the firm.

3. To the 3d interrogatory the witness says: I knew Phineas M. Nightingale. I never, as representing the estate, or heirs, or legal representatives of Edmund Molyneux, conducted any settle-
195 ment of the mortgage debt referred to in this interrogatory, nor did I ever know or hear of any such settlement, except as hereinafter explained. The claim was in our hands as the attorneys of the administrator of Mr. Molyneux' estate for collection, and I knew, in a general way, that there were some negotiations with Mr. Nightingale about it, but I knew nothing of the details of any such negotiations until informed by my partner, Gen'l Lawton, that there had been an adjustment of the amount due on the mortgage; that Mr. Nightingale had conveyed to Mrs. Molyneux, the widow and one of the heirs-at-law of Mr. Edmund Molyneux, the place called Dungeness, at the estimated value of $25,000, in part payment, and that the remainder agreed to be due was $51,250. At the same time he requested me to proceed at once to foreclose the mortgage for that amount. The matter in that stage was referred to me because the mortgage had to be foreclosed in McIntosh county, where the land lies, and I was in the habit of attending to the business of the firm in that court. Then, and not until then, my
196 personal intervention in the transaction commenced. I know nothing of my own knowledge of the reasons or principles upon which the amount due on the mortgage was adjusted, but have been informed by Gen'l Lawton that an allowance was made on account of the loss, thro' the results of the war, of the slaves included in the mortgage, which were bought along with the real estate and mortgaged along with the real estate, to secure the entire purchase-money of land and slaves. I know only that the amount due on the mortgage at the time of the adjustment, without such allowance made, was about $100,000 or upwards. I have no knowledge that the mortgage was considered by any of the parties to it as "settled and discharged" for any purpose whatever as the result of those negotiations; on the contrary, I was informed, as I have stated and believe, that it was not settled or discharged, and proceeded to foreclose it with that understanding and belief. The mortgage was not marked "settled or satisfied or anything equivalent thereto," nor was "there any assignment or transfer or sale of said mort-
197 gage by the heirs or representatives of said Molyneux to said P. M. Nightingale for himself or as trustee or agent for any person or persons," nor was it "turned over to said P. M. Nightingale under an agreement or settlement, which was taken and considered as a satisfaction and payment by said P. M. Nightingale of said mortgage," so far as was known to me. When requested to foreclose, as stated above, the bonds and mortgage were placed in my hand for that purpose without any entries of that sort upon them, and remained in my special possession and care until the foreclosure

proceedings were completed, and no entries of any sort were made upon them during that time.

4. To the 4th direct interrogatory the witness says: As this interrogatory is founded on an assumption that the mortgage was marked settled or satisfied and turned over to Mr. Nightingale, and I have already testified that no such thing had been done, it may be unnecessary for me to attempt any further answer to this interrogatory;

198 but, in order to testify fully, I add that I did not know, was not informed, and did not suspect that "any interest, claim, right, or demand in said mortgage" had been "transferred or assigned or reserved, or intended to be reserved, to any person whomsoever." On the contrary, I took charge of the mortgage for the purpose of foreclosing it, under the full belief that I was about to do so for the benefit of the estate of Mr. Molyneux and as one of the counsel of the administrator.

5. To the 5th interrogatory the witness says: This interrogatory also assumes that the mortgage had been transferred to Mr. Nightingale and marked settled or satisfied, and so assumes, as I have stated, contrary to the facts; but I answer that I never heard at any time or from anybody, or "had any reason to believe or suspect," that any of the children of P. M. Nightingale had ever "advanced any money or goods or property to enable him to pay off and settle said mortgage," or that it was "understood or agreed or in contemplation" by anybody "that these defendants, or either of them, were to derive any right or interest in said mortgage by reason of

199 said P. M. Nightingale having paid it off and settled it with property or the interest in property belonging to the said defendants."

6. To the 6th interrogatory the witness says: This interrogatory also assumes that there was a settlement and relinquishment of the mortgage, and I have several times stated that there was no such thing known to me, either express or implied. As I stated in my answer to the 3d interrogatory, I was informed by Gen'l Lawton that Mr. Nightingale had conveyed the place called Dungeness to Mrs. Molyneux, at the estimated value of $25,000, in part payment of the mortgage. I have no other knowledge of the fact than such as I have derived from Gen'l Lawton and from seeing the conveyance in which that amount is stated as the consideration. But I may add that Dungeness has since been sold, within my knowledge, for $15,000, and that I therefore infer that $25,000 was an exaggerated estimate of its value.

7. To the 7th interrogatory the witness says: The deed from Mr.

200 Nightingale to Mrs. Molyneux for Dungeness, mentioned in this interrogatory, dated July 21, 1870, is in a handwriting which I do not now recognize. I do not recollect that I knew anything of it until requested to foreclose the mortgage. I do not know, therefore, whether it was drawn in our office or not. I infer from the names of the witnesses—Gen'l Lawton himself and the late Mr. John H. Thomas, who had an office on the same floor with us about that time—and from the fact that we were the attorneys of

Mrs. Molyneux and of the estate, that it was drawn and executed under Gen'l Lawton's direction.

I know of no deed from Louisa G. Nightingale and others to Geo. H. Johnston, adm'r, &c., in consideration of $51,250. There was a deed from Louisa G. Nightingale and others, the children of Mr. P. M. Nightingale, made in 1871, by which they conveyed to Mrs. Molyneux all their interest in Dungeness, in consideration of the transfer and assignment to them by Mr. Johnston, as adm'r, of a judgment in the superior court of Glynn county in his favor against Mr. P. M. Nightingale, and of the mortgage before referred
201 to. I do not recollect that I knew anything of this deed until long after it was made. I presume it was drawn in our office and under Gen'l Lawton's direction, because it appears to be in the handwriting of Mr. J. L. Whatley, who was in our office about that time.

The mortgage was not marked settled or satisfied at the time either of these deeds was executed, or about that time, or at any time until after the mortgaged property had been sold under foreclosure; and I do not know that it was ever at any time turned over to Mr. P. M. Nightingale. The mortgage was placed in my hands for foreclosure, under the circumstances already detailed, not long after the date of the former of the above-mentioned deeds—say some time in October, 1870, and before the year 1871, during which the latter was made. I received it without any such entries upon it, and no such entries were made upon it during my special control of it, which continued until the foreclosure proceedings were completed, as already stated. The bonds and mortgage
202 were delivered to Jackson, Lawton & Basinger, thro' Gen'l Lawton, and, I suppose, by Mr. Johnston, the adm'r, for collection, some time before the date of the said first-mentioned deed, were in our possession at the time the latter of said deeds purports to have been made, and remained in our possession certainly until Jan'y, 1873, and, according to my belief, as to the mortgage, at least, until May 5, 1877, when the mortgage was sent by express to Mr. Wm. Nightingale.

I take it for granted Mr. Johnston knew of both deeds. I cannot say of my own knowledge that he did, but the transactions could hardly take place without his authority, and he must have made the assignment recited in the latter deed. The assignment itself is missing and cannot be found. Whether either of the deeds was ever in his actual possession, as distinguished from that of ourselves as attorneys of the estate, I cannot say, but I should think not, as neither of them was made to him, &, in the then condition of the affairs of the estate, we were the proper custodians of both. There was
203 for several years a bundle of papers relating to the Molyneux estate in our safe, & these deeds may have been in it; but I do not recollect ever having had occasion to open it, as Gen'l Lawton, with the exceptions stated, attended exclusively to that business.

My own first knowledge of the existence of the later of the two deeds was obtained 6 or 7 years afterwards, when I had occasion to investigate the title to Camber's Island for the purpose of defending

an action of ejectment commenced by one Katie Sanger against William Nightingale in the superior court of McIntosh county. Then, for the first time, I learned from Gen'l Lawton that there was such a deed, & that it was in the hands of Mr. Daniel G. Purse, of Savannah, the agent of the Molyneux. I obtained it, as well as the former deed, from Mr. Purse; and, finding it had not been recorded, I sent it, with Mr. Purse's consent, to the clerk of Camden county to be recorded as part of Mrs. Molyneux' evidence of title to Dungeness. From the date of the certificate of record I conclude I so sent it in September, 1879. Both these deeds are now in my possession, by permission of Mr. Purse, for the purposes of the
204 present suit.

8. To the 8th interrogatory the witness says: I myself conducted the proceedings to foreclose the mortgage of Camber's Island, so often mentioned, in McIntosh superior court. I have already stated that it had not been marked settled or satisfied or turned over to Mr. P. M. Nightingale, as so persistently assumed in the interrogatories. I have also stated where, how, and why the conduct of the foreclosure fell specially into my hands. The foreclosure was in the name of Chas. Spalding for the use of George H. Johnston, adm'r, &c., simply for the reason that I am accustomed to prefer, in such cases, to proceed in that way, even tho' the assignee may sue in his own name. I don't think I asked Mr. Spalding for the use of his name. The right to use it was implied in the assignment; but I afterwards told him of the circumstance and he made no objection.

The petition was to have been filed & the rule *nisi* taken at the November term of McIntosh court in 1870, but that term was not held, nor was there another term held until April, 1872,
205 according to my recollection. This was owing to the fact that McIntosh county had been put in the Brunswick circuit in the fall of 1870 without any change of the terms, so that the time for holding court conflicted with those of the courts already in that circuit, and it was not restored to the eastern circuit until Dec., 1871, when the Legislature was again in session. I can't account for the loss of those 3 terms in any other way. At any rate the petition was filed and the rule *nisi* taken at the April term, 1872. Mr. Nightingale acknowledged service of the rule *nisi* on May 22, 1872. At the Nov. term of the court, in the same year, viz., on Nov. 29, 1872, the rule absolute was granted. The records of the court for that time were afterwards destroyed by fire, & I know of no copy of these proceedings in existence, but I think I can safely swear, as I do, that they were regular and formal in every particular. As for the dates, I get them from the private docket of Jackson, Lawton & Basinger, the entries in this case being all in my own hand-
206 writing, except the title of the case and the term at which it was commenced, which were entered by our then clerk, and enabling me to swear positively to their correctness, as each was made as soon as possible after the occasion for it arose, according to my habit in such matters. The execution was issued on the same day the rule absolute was granted, as its date shews. It was at once

handed to the sheriff. His entry shews that it was levied on the next day, Nov. 30, 1871. The sheriff's deed to the purchaser shews that the property was advertised to be sold on the 1st Tuesday in Jan'y, 1873, which was the 7th day of the month, & that it was duly sold accordingly, and bought by Wm. Nightingale for $30,000, to whom a deed was made by the sheriff. My direct personal intervention in this matter, beginning, as I have before explained, ceased with the issuing of execution. I gave no further instructions to the sheriff, was not present at the sale, and took no further part in the conduct of the business. As to what happened at the sale, and in immediate conection with it, I can only speak from information derived from Gen'l Lawton and corroborating documents. In that way I know that no money was paid by Wm. Nightingale except, perhaps, for costs, and that he gave his note for the amount of his bid, $30,000, payable to Jackson, Lawton & Basinger, or order, one day after its date, which note is now in my hands. The following is the copy of it asked for:

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$30,000. DARIEN, *January* 7, 1873.

One day after date I promise to pay to Jackson, Lawton & Basinger, or order, thirty thousand $\frac{00}{100}$ dollars for value received, purchase-money of Camber's Island, sold at sheriff's sale this day.

WM. NIGHTINGALE.

I did not myself give any instructions or advice about the taking of this note or know what were given by Gen'l Lawton, for if any were given he must have given them. I do not think I knew at the time that the note was payable to our order, nor is it likely if I had known it that the circumstance would have specially attracted my attention, for I have very often found it convenient to take notes payable to my own order for money due to clients. I have since learned from Gen'l Lawton that the note was so taken and the sheriff's deed made to Wm. Nightingale alone; because it had not been settled how the title or the distribution of proceeds were to be finally arranged.

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I have already explained that I was not then aware of the assignment of the mortgage to Louisa G. Nightingale and others, made in 1871; but, very obviously, it would have caused no change in the names of the parties to the foreclosure if I had known it. Without regard to considerations of that sort, the foreclosure was necessarily for the benefit of the persons to whom the mortgage belonged.

9. To the 9th interrogatory the witness says: Mr. Gignilliat was not associated with us in the foreclosure case.

10. To the 10th interrogatory the witness says: I repeat that there never was any settlement of the mortgage with Mr. P. M. Nightingale known to me other than the partial payment by the above-mentioned conveyance of Dungeness and the adjustment of the balance due, and that those transactions took place before the foreclosure was commenced. There never was any transfer of the mortgage to him at any time before or after the foreclosure.

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I here append a copy of the entries in the foreclosure case upon the private docket of Jackson, Lawton & Basinger as follows:

CHAS. SPALDING, for Use, &c., &c. vs. PHINEAS M. NIGHTINGALE.	No. 310.	McIntosh Sup'r Court, April Term, 1872, S. A.	Execution issued Nov. 29, 1872.
Mortgage. Prin., $51,250, and int. from Dec. 31, 1869.		May 22, 1872.—Rule absolute for $51,250, int. from Dec. 31, 1869, and $—— costs, Nov. 29, 1872.	Sec. extra docket.

11. To the 11th interrogatory the witness says: I never so much as heard of Mr. Shaw's will until I learned of it when preparing the defence of the above-mentioned ejectment case of Katie Sanger against William Nightingale, in 1878. It had nothing to do with that case, but a copy of it was then shown me, and I have that copy now in my possession. I have never expressed any opinion about it; indeed, I cannot say I have ever formed one.

210 12. The 12 interrogatory being addressed to Gen'l Lawton alone, the witness makes no answer.

13. To the 13th interrogatory the witness says: Altho' we were the usual attorneys of W. Cumming & Co. when they wanted professional advice or assistance, they did not consult us in the transaction represented by the conveyance of Camber's Island from Wm. Nightingale and wife to them, dated Jan'y 29, 1874, a copy of which is attached to the bill as Exhibit "K." Altho' that conveyance was once in my hands, I do not know what has become of it. But I have the bond to reconvey given by W. Cumming & Co. in connection with that conveyance, and it seems to be in the handwriting of Mr. Chas. N. West. At *at* rate, Jackson, Lawton & Basinger had nothing to do with it, and for myself, I never knew there had been such a conveyance until Wm. Hull of that firm put the claim in our hands for collection in consequence of the above-mentioned ejectment suit of Sanger against Wm. Nightingale.

211 14. To the 14th interrogatory the witness says: I do not see how I can answer this interrogatory in any other way than by repeating that I had nothing whatever to do with the matter, and knew nothing about it until about 4 years after it occurred.

15. To the 15th interrogatory the witness says: When the claim of W. Cumming & Co. against Wm. Nightingale was put in our hands for collection the nature of the transaction was, of course, explained. It was stated to be, and appeared from the form of the papers to be, under section 1969 of the code. It devolved upon myself to take charge of the claim, and I certainly so considered and treated it. There was a bond to reconvey, of the same date with the conveyance, tho' this, of course, was not in the possession of W. Cumming & Co., or the survivors of that firm, at that time. It came into my hands afterwards, and I have it now. Suit was commenced by the survivors of W. Cumming & Co. (Mr. Cumming being dead) and by Mr. Cumming's administratrix against Wm. Nightingale upon the note secured, returnable to the October term, 1878,

212 of McIntosh superior court, and judgment was rendered for the plaintiffs, at the April term, 1879, for $7,500 and costs; and thereupon the plaintiffs did, under section 1970 of the code, execute and file and have recorded in the office of the clerk of McIntosh superior court a reconveyance to Wm. Nightingale, dated Sept. 18, 1879, of which Exhibit L, attached to the bill, appears to be a correct copy. This was done with a view to take out execution upon the judgment and levy it upon the land, if necessary, as, indeed, was afterwards done, and the land advertised for sale, but a part payment was made upon the debt, and the sale did not take place.

16. To the 16th interrogatory the witness says: I have already said more than once that I had nothing to do with and did not know of the securing of any advances from W. Cumming & Co. to Wm. Nightingale by the above-mentioned conveyance from the latter to the former under section 1969 of the code until the claim came into my hands for collection. I have also stated that I became aware of the assignment of the mortgage by Mr. Johnston, adm'r, &c., to the children of Mr. P. M. Nightingale,
213 and that the execution in the foreclosure case had proceeded for their benefit, only when I came to look into the title of Wm. Nightingale when it was attached in Katie Sanger's ejectment suit. I had probably learned of those facts by the time I commenced the suit of the survivors of W. Cumming & Co. against Wm. Nightingale, but I do not recollect that sections 3377 and 3378 of the code ever occurred to my mind in connection with the matter; if they had, and I then knew the facts, I certainly would not have proceeded under those sections, for the trust to which the property was subject in Wm. Nightingale's hands was only to be implied from the circumstances, and it seems to me very obvious that those sections apply only to express trusts. Besides, if Mrs. Sanger was to succeed in her ejectment suit it could not possibly make any difference to the survivors of M. Cumming & Co. whether there was a trust or not, or in what manner they had attempted to enforce their claim, and if she was to fail, as it was perfectly clear
214 she must, and as she in fact did, there was no reason to apprehend that the brother and sisters of Wm. Nightingale would repudiate his contract with W. Cumming & Co. when they knew it had been made for their benefit as well as his own.

17. To the 17th interrogatory the witness says: I have already stated, in my answer to the 8th interrogatory, what I have learned from Gen'l Lawton as to the reasons why Wm. Nightingale's note for $30,000 was given as it was; but that I do not remember that I knew at the time it was payable to our order, or anything more about it than that there was a note. I have no recollection of ever having seen it until the Sanger and Nightingale ejectment case caused me to inquire into the entire details of the business. I have already explained that, with the exception of the conduct of the foreclosure case in court, Gen'l Lawton managed the whole business, and knew many things which were at the time not known to me. I did nothing at all about it in any way after the execution was

issued except as I have stated. I have already stated what I have learned from him as to the reasons why the note was taken in
215 that form. I myself gave no instructions at all about it, and did not know then what instructions were given by Gen'l Lawton. If I had then known all the facts as I know them now, and it had devolved on me to manage the matter, I think I would have considered it best to do and advise as he did. I do not think it would have occurred to me, as it certainly does not now, that by receiving the note as we did we became trustees in any other sense than as mere bailees to keep for others *are* trustees. Of course, we held the note, without reference to the form of it, for the persons entitled to the proceeds of the sale. I know of no demand for the payment of the note. As I now understand matters, there was no occasion for any demand, the note having been given only for a temporary purpose, and for the same reasons the note has long since been valueless.

18. To the 18th interrogatory the witness says: The firm of Jackson, Lawton & Basinger was employed for the defendant in the said ejectment case of Katie Sanger against Wm. Nightingale, and the defence was conducted by myself alone of the firm. It was
216 during the progress of the suit and in consequence of it that I became aware of the fact that William Nightingale's brother and sisters were equally interested with himself in Camber's Island.

Upon first taking up the case I was at a loss to conceive upon what Mrs. Sanger's claim was founded. She was claiming under the foreclosure of a junior mortgage, and Nightingale under the foreclosure of a senior mortgage of the same property made by the the same person, viz., P. M. Nightingale. Besides, the proceedings under which she professed to have acquired title were fatally defective and contrary to law, while those under which Nightingale claimed had been perfect in every particular. Puzzled to comprehend upon what the plaintiff could build any hope of success, I caused some inquiries to be made, and then discovered that she expected to attempt to shew that the conveyance of Dungeness to Mrs. Molyneux had been in full satisfaction of the mortgage to Mr. Spalding under which we claimed, and that there had been something wrong about the sale under that mortgage. I then enquired of Gen'l Lawton
217 and of Wm. Nightingale what possible ground there could be for either of those notions, and then ascertained all the details heretofore mentioned in my answers as having been previously unknown to me; and it then became known to me that Wm. Nightingale was, and understood himself to be, holding Camber's Island for his brother and sisters as well as himself, their respective interests being equal. I was prepared to shew *shew* them all these facts upon the trial of the ejectment case, if occasion had required; but the case was disposed of by a nonsuit or dismissal. As soon as that result was reached I at once urged Mr. Nightingale, in justice to his brother and sisters, to execute some written evidence of their rights; and he, accordingly, on Dec. 10, 1879, executed a paper drawn by myself in which he declared his brother and sisters to be equal owners with himself. When the present litigation is concluded favorably

to the defendants the evidence of title will doubtless be completed by the execution of formal deeds between the parties; of course, I desired, also, the relief of Jackson, Lawton & Basinger from
218 all further responsibility for the safe keeping of his note for $30,000, and I consider that note to have been thus rendered valueless for any purpose whatever; but for the information given to us upon the termination of the ejectment suit, that the present litigation was to be commenced, the note would long since have been destroyed or surrendered to Mr. Nightingale.

19. To the 19th interrogatory the witness says: In answer to this general interrogatory, I have only to add that I never entertained the slightest doubt or suspicion that the conveyance of Dungeness to Mrs. Molyneux was anything more than a mere part payment of $25,000 on the mortgage debt, or that it had any other purpose than that. There was nothing whatever to give rise to such a doubt or suspicion. I believed then, and believe now, that it had no other purpose than that. All the foreclosure proceedings and their sequences were conducted in perfect good faith. Had anything improper been intended my partners and I were not proper persons to be intrusted with them. When those pro-
219 ceedings had been concluded, and not till then, the bonds and mortgage were marked "satisfied." As all the property was exhausted, there was no need to keep them open any longer; they were of no use to any one. The entry on the mortgage, which is now before me, was made by Gen'l Lawton in the name of the firm as attorneys of record for the plaintiff in foreclosure, and bears date Jan'y 9, 1873. I have no information, except from the copy of Gen'l Lawton's letter to Mr. Spalding attached to the bill, and our press copy of it, that the bonds and mortgage were even then turned over to Mr. P. M. Nightingale. The bonds might very well have been "turned over" to him, as it was certain that nothing more would be collected upon them. But the mortgage appears to me to have properly belonged, when exhausted, to Mr. Wm. Nightingale as the purchaser at the mortgage sale; and, in point of fact, certain papers, which I believe to have included the mortgage, were sent from our office to him by express on May 5, 1877, on the theory that they belonged to him. I know of no arrangement at all
220 with Mr. P. M. Nightingale on the subject. It is probable, I think, since Gen'l Lawton said so in the said letter, that the bonds were surrendered to Mr. P. M. Nightingale, as they, perhaps, ought to have been, if nothing more was to be expected from them. But I do not think the mortgage was for the reason above given. Gen'l Lawton probably wrote carelessly. I state further that I never heard of Mr. Sanger, nor of the mortgage he claims to have, until the ejectment case above mentioned was put in my hands to defend, and that I never in any of the transactions referred to had the least reason to suspect any fraudulent contrivance or design for any purpose whatever. Indeed, I fail to perceive on what ground such a design can be imputed to the holder of the oldest mortgage on property who simply proceeds by customary methods to enforce it, and,

so far as I know, that statement expresses the whole history of the case.

WM. S. BASINGER.

In my answer to the 7th interrogatory I stated, in the final sentence of my answer, that the deeds referred to were in my
221 possession. They were so at the time those answers were written. Since that time they have been taken from me, and I have reason to believe that they are now in the possession of the present owner of Dungeness.

WM. S. BASINGER.

Answered, sworn to, and subscribed before us this 25th day of November, 1882.

J. LAWTON WHATLEY, [L. S.]
Commissioner.
J. W. BURROUGHS, [L. S.]
Commissioner.

Deposition of A. R. Lawton.

In the 5th Circuit Court of the U. S. for the So. Dist. of Georgia. In Equity.

W. H. M. SANGER, Compl't, and WM. NIGHTINGALE *et al.*, Def'ts.

Examinations and depositions of witnesses produced, sworn,
222 and examined by the undersigned commissioners in virtue of the annexed commission issuing out of the honorable the circuit court of the United States for the southern district of Georgia, taken and reduced to writing at Savannah, in the county of Chatham and State of Georgia, on this the twenty-fifth day of November, 1882.

ALEXANDER R. LAWTON, aged — years, being duly sworn, answers and deposes as follows, to wit:

1. To the first interrogatory the witness answers: I believe I have seen the complainant once; have but a very slight acquaintance with him. I know all of the defendants; some of them intimately, but with some of the ladies of the Nightingale family I have only a slight acquaintance. I reside and practise law in Savannah; have been associated with Messrs. Henry R. Jackson and Wm. S. Basinger, under the firm name of Jackson, Lawton & Basinger, from December, 1866, to January 1st, 1881.

223 2. To the second interrogatory the witness answers: I do not recollect ever to have given legal advice to the late Edmund Molyneux in his lifetime, but I was the legal adviser of his widow, the late Mrs. Eliza Molyneux, who resided in England after his death, and also of her agents in this country—first, Mr. Allan Fullertin, and then Mr. John Cunningham—and of Mr. George H. Johnston, who was for a short time administrator in Georgia of the estate of Edmund Molyneux, all the heirs and legatees under the

will of the latter being foreigners, and therefore unable to execute the will in this State. I was more especially the counselor and adviser of Mrs. Molyneux, to whom nearly the entire estate of her husband was left by his will. I have been continuously the legal adviser of the legal representatives of the Molyneux property in Georgia, and of their agents here, from the year 1866 to the present time; also of Major Edmund Molyneux, son of the deceased.

3. To the third interrogatory the witness answers: I knew Phineas M. Nightingale in his lifetime. Whatever negotiations were
224 conducted by the firm of Jackson, Lawton & Basinger, representing the beneficiaries under the will of Edmund Molyneux, with Mr. Nightingale or any other parties, were probably conducted through me, as I was the only member of the firm who had any direct communication with Mrs. Molyneux or the agents of that estate. The claim arising under the bonds secured by mortgage on Camber's Island was placed in our hands for collection. I represented the Molyneux estate—the heirs and legatees—and no one else, in that business. My conferences with Mr. Nightingale were such as a creditor would have with a debtor under great pecuniary embarrassment. Mr. Nightingale claimed that so much of the debt as was incurred for the purchase of negro slaves was not legally due by him under the laws of Georgia as they were then understood, and that justice to his other creditors required that he should insist on this reduction. As I saw very clearly that it was impossible to collect the whole amount, and, moreover, as I was authorized by Mrs. Molyneux to deal liberally with Mr. Nightingale, I
225 did not hesitate to deduct the amount supposed to have been still due for the price of negro slaves. He also offered to make a conveyance of a well-known place called Dungeness, at the estimated value of twenty-five thousand dollars, in part payment, and I received a title from him for the same. The whole amount of the bonds, with interest, being over one hundred thousand dollars, was reduced by these deductions to $51,250.00. I have no papers by me showing the elements or details of the calculation by which this sum was arrived at, nor can I rely implicitly upon memory for this purpose after such a lapse of time. I am confident, however, of the general basis, and find these figures in the papers on which the suit was brought and mortgage foreclosed.

The foreclosure proceedings being in McIntosh county, a court which Maj. Basinger habitually attended and I did not, the business, from the commencement of proceedings in court to the sale of the Camber's Island property by the sheriff, was conducted by
226 him, with a general knowledge, however, on my part of the various steps taken.

It is not true, so far as my knowledge extends, that the mortgage was considered by any of the parties to it as "settled and discharged" for any purpose whatever as the result of those arrangements. On the contrary, it was not settled or discharged, and we proceeded to foreclose it as a good subsisting debt to the estate of Molyneux. The mortgage was not marked "settled or satisfied or anything equivalent thereto," nor was there any "transfer, assignment, or sale of said

mortgage by the heirs or representatives of said Molyneux to said P. M. Nightingale, for himself or his trustee or agent or any person or persons," nor was it "turned over to said P. M. Nightingale under an agreement or settlement which was taken and considered as a satisfaction and payment by said P. M. Nightingale of said mortgage." After the bonds and mortgage were turned over to Maj. Basinger to commence the proceedings, they remained in his special possession until those proceedings were finished, and if any
227 entries were made during that time they should have been made by him or under his direction.

4. To the fourth interrogatory the witness answers: As the mortgage was not settled or marked satisfied, nor turned over to Mr. Nightingale until after the foreclosure proceedings had been finished and the property sold, of course I did not know, was not informed, and did not suspect that any interest, claim, right, or demand in said mortgage had been transferred or assigned or reserved, or intended to be reserved, to any person whomsoever. The mortgage proceedings were commenced and conducted to a conclusion by us solely as the representatives of the Molyneux estate, and we had no professional connection, direct or indirect, with any other person or persons.

5. To the fifth interrogatory the witness answers: The answers already given might seem to make a reply to this unnecessary, as it appears that there had been no transfer to Mr. Nightingale
228 for any purpose, but for greater certainty I answer that I never heard at any time from anybody or had any reason to believe or suspect that any of the children of P. M. Nightingale had ever advanced any goods or money or property to enable him to pay off and settle said mortgage, or that it was understood or agreed or in contemplation by anybody that the defendants or either of them were to derive any right or interest in said mortgage by reason of said P. M. Nightingale having paid it off and settled it with property or the interest in property belonging to said defendants.

6. To the sixth interrogatory the witness answers: I have already stated that there was no relinquishment or settlement of the mortgage at the time indicated, and have also stated that Dungeness was conveyed to Mrs. Molyneux at the estimated value of $25,000.00, in part payment of the debt due to the estate of Molyneux. It is impossible for me to answer any question based upon the assumption that the mortgage was satisfied or relinquished at or about the time of this conveyance of Dungeness, as such was not the fact, to
229 the best of my knowledge and belief. The Dungeness property has since been sold by the Molyneux family for the sum of fifteen thousand dollars.

7. To the seventh interrogatory the witness answers: The deed from Mr. Nightingale to Mrs. Molyneux for Dungeness, dated July 21st 1870, is in the handwriting, I believe, of the young man who was then clerk in our office. It was prepared in our office, and under my general direction. I am not aware of any deed from Louisa G. Nightingale and others to George H. Johnston, administrator, &c., in consideration of $51,250.00. A deed was executed by

Louisa G. Nightingale and others in 1871, by which they, the children of P. M. Nightingale, conveyed to Mrs. Molyneux all their interest in Dungeness in consideration of the transfer and assignment to them by Mr. Johnston, as administrator, of a judgment in the superior court of Glynn county against P. M. Nightingale, and also of the mortgage already referred to. The mortgage was not marked settled or satisfied at the — of the execution of either of these deeds, nor until the mortgage property had been sold
230 under foreclosure. The mortgage and bonds were placed specially in the hands of Maj. Basinger some time in the year 1870 for suit and foreclosure, and they remained under his special charge until after the mortgage property had been sold by the sheriff. The bonds and mortgage were probably received by me originally from Mr. Fullerton, who had been the confidential clerk of Mr. Molyneux in his lifetime, and acted as agent of the family for many years after his death, retaining the custody of nearly all the valuable papers of the estate, and corresponding directly with Mrs. Molyneux on the other side of the water, while he conferred with counsel here. When Mr. Cunningham succeeded Mr. Fullerton as agent he sustained very nearly the same relations to the family and their counsel. Mr. Johnston was the brother of Mrs. Molyneux and an aged man; he did not administer until a number of years after Mr. Molyneux' death, and then only to protect the estate formally in certain suits in the United States courts. The active management of the affairs and business of the estate
231 continued in the agent, and Mr. Johnston seldom acted except when the authority of a legal administrator was necessary. Hence I have said that these papers were probably delivered to me by the agent, though I cannot swear to it positively. My recollection is that Mr. Johnston knew all about the execution of the deeds, and was cognizant of all of the transactions throughout, but that he depended in a great measure for his information upon the counsel and the agent of the estate, both of whom corresponded directly with Mrs. Molyneux.

8. To the eighth interrogatory the witness answers: I have already stated that the foreclosure proceedings were conducted almost exclusively by W. S. Basinger, and, as he is also examined as a witness in this cause, his statements and explanations as to the details and mode of conducting those proceedings will be much more satisfactory than anything I can state. My recollection is that when the sale was about to take place I did assume more of the active control of that matter, and, to the best of my recollection, I
232 did give instructions, either directly or indirectly, to the sheriff to this effect, that if William Nightingale should purchase the property he, the sheriff, was authorized to take his note, payable to the order of the attorneys in the case, Jackson, Lawton & Basinger, for the purchase-money, and to make a title to Mr. Nightingale on receiving the costs from him. As far as I can recall, the reasons which induced me to have the note made thus payable *they* were simply these, that the mortgage having been assigned before foreclosure was completed, and, as there would probably be

a number of parties interested in the purchase, it would be more easily under control in dividing out the purchased property and the payments if the note was payable to our order. I authorized the sheriff to take the note instead of demanding the cash, because Mrs. Molyneux, the party having the absolute right to control, was willing to do a kindness to the Nightingale family, while she was exercising her own undoubted legal rights.

233 9. To the ninth interrogatory the witness answers: Mr. Gignilliat was not associated with us in the foreclosure case. I was informed that he was acting as counsel for Mr. William Nightingale at and about the time of the sale of Camber's Island, or, perhaps it is more proper to say, that at that time he was counsel for the Nightingale family.

10. To the tenth interrogatory the witness answers: I can only repeat again that there was no settlement of the mortgage with Mr. Nightingale, nor was there ever any transfer of it to him, nor was it ever marked satisfied before or during the foreclosure proceedings, levy, and sale. I have already stated that Mr. Basinger conducted all the foreclosure proceedings, and begged to refer to his answer to this interrogatory for the details enquired about.

11. To the eleventh interrogatory the witness answers: To the best of my knowledge and belief, I never saw a copy of Mrs. Shaw's will until within the past eighteen months, and do not recol-

234 lect even now that I have ever read it through. I did not stop to enquire whether the title to Dungeness was derived through that will or not, though I may have heard and believe that it was. Mr. Nightingale was of the opinion that he had a good title to it. As all we could get out of it was clear gain, I knew there would be time enough to look into that matter before the sale of the mortgage property, and the credit of $25,000.00 could then be refused if the title proved to be defective, and we could try to make our money out of Camber's Island. I knew nothing at the time of this conveyance to Dungeness about the claim which the children afterwards set up to an interest in the property; that was made known to me some time afterwards. I will add that Mr. Nightingale never did assent to the correctness of their claim, although they had been advised that it was a good one. I neither formed nor expressed an opinion as to the will of Mrs. Shaw, nor was I requested to do so.

12. To the twelfth interrogatory the witness answers: The

235 copy of my letter to Col. Charles Spalding and attached to the bill as Exhibit G is substantially correct. I find a letter-press copy of it in the letter-book of Jackson, Lawton, & Basinger of that date, and I am satisfied that the facts therein stated were true, though I cannot remember them all now in detail. My impression is that I did "turn over" to P. M. Nightingale, or his son William, the bonds and mortgage on Camber's Island after the property had been sold under said mortgage and purchased by William Nightingale. To the best of my recollection, the mortgage was marked "satisfied" in the early part of January, 1873, a few days after the sheriff's sale of the property. An examination of the mort-

gage at this moment shows that it was satisfied January 9th, 1873. The above statement corresponds with my general recollection of events which happened many years since, and I am sure they are substantially correct; but in looking over the copy-book (letter-press) of Jackson, Lawton & Basinger I find two letters written
236 by me May 5th, 1877, which shew that these bonds and mortgage were probably in our office at that date. Mr. John K. Nightingale having left a memorandum at our law office to ask for "papers" connected with his father's estate, I wrote him the letter, hereto attached, marked A, and sent the papers by express to William Nightingale, and wrote him the letter hereto attached, marked B. If the bonds and mortgage were included in the package sent, then the most natural explanation, and I believe the true one, is that although these papers were, in fact, "turned over to Mr. Nightingale" in January, 1873, they were left by him with us for safe keeping, as was frequently the case with planters, or they may have been brought back to us some time after January, 1873. Having discovered the copy letters in this old letter-book, I procured the originals, which are hereto attached.

To the thirteenth interrogatory the witness answers: I was often consulted by the firm of W. Cumming & Co. in a professional way, but do not remember that I, or any of my firm, were con-
237 cerned at all in effecting or advising about their negotiations with William Nightingale, which resulted in their making an advance to him and a title to them to secure it of the Camber's Island property. I am satisfied the deed was not prepared or drawn by me nor in my law office, and I find no charge in the books of Jackson, Lawton & Basinger for any professional service rendered in connection with that transaction. I believe the deed to be in the handwriting of Charles N. West, Esq., who had several times represented professionally P. M. Nightingale in his lifetime and one or both of his sons after his death. For myself, I never represented either of them professionally, and never received or claimed a fee from either of them in my life. It is not improbable that one of the firm of W. Cumming & Co. did inquire of me whether William Nightingale had good title to Camber's Island, and, if such inquiry was made, I have no doubt I expressed my belief that he had a good title to the property. To the best of my recollection, I had no conversation at or about that time with either member of the
238 firm of W. Cumming & Co. in reference to any interest that any other members of the Nightingale family had in the property purchased by Wm. Nightingale. Indeed, I did not know the details of any arrangement between the brothers and sisters of the Nightingale family, but knew that he held the legal title and was permitted to exercise absolute control over the property, although I did learn that he was controlling the property for their benefit as well as his own.

14. To the fourteenth interrogatory the witness answers: I have already stated that I did not represent W. Cumming & Co. professionally in this transaction with Wm. Nightingale, and therefore did not "advise or permit" my clients to do anything in the prem-

ises; but if I did have any casual or general conversation with them on the subject, I am quite sure I did not tell them that Wm. Nightingale could not make a good title to this property for the purposes intended, for I could not give any such opinion upon the facts as known to me.

239 15. To the fifteenth interrogatory the witness answers: As I have already answered that I had nothing to do professionally with this transaction between W. Cumming & Co. and Wm. Nightingale. I can only say that I believe the advances were made and the deed and bond to reconvey taken under section 1969 of the revised code of Georgia, and that the reconveyance was made by the administratrix of W. Cumming, deceased, and the surviving copartners, to Wm. Nightingale, Sept. 18th, 1879, and that a judgment had then been rendered in McIntosh superior court against Wm. Nightingale on notes he had given for these advances made.

16. To the sixteenth interrogatory the witness answers: Having already stated more than once that I neither advised nor permitted my client, W. Cumming & Co., to do anything in the premises as to making large advances on Camber's Island, I do not know that I am called on to give a professional opinion upon a case stated in the interrogatory. When the necessity arose for proceeding in the courts to collect this claim of W. Cumming & Co. we were employed

240 by them professionally, and as Maj. Basinger was the member of our firm who habitually attended McIntosh court, the case was under his immediate charge. As his copartner I entirely agreed with him in the course he adopted and the proceedings he instituted to collect this claim. With my knowledge of the law and the facts as they appeared then and appear now, had the duty devolved upon me to take charge of the claim, I would not have proceeded under sections 3377 and 3378 of the code.

17. To the seventeenth interrogatory the witness answers: The note for $30,000.00 given by Wm. Nightingale to the sheriff was made payable to Jackson, Lawton & Basinger by my direction. I think my willingness to take it in this form was made known through Mr. Gignilliat, who was advising Mr. Nightingale in the premises. It was taken in that form entirely for convenience, and expressed on its face that it was for the purchase-money of Camber's Island. I did not know what arrangement the family would

241 make among themselves for the final distribution or management of the property; whether they would attempt to divide it in kind or permit one or more of the family to become the permanent owners of the property, accounting to the others for their respective shares of the purchase-money, or what other disposition they would choose finally to make, but I did know that for the then present it was the wish of the family that Wm. Nightingale should have the legal title and the absolute control and management of the property. So long as they were willing to trust it in that form it was their business and not mine. This note in the hands of Jackson, Lawton & Basinger represented the purchase-money, which was the supposed value of the purchase-money to the family, and the note remained in our hands subject to their order and control; when-

ever they should desire to give a more definite shape to these matters. We were only custodians of this note and not trustees in any proper sense of the term; never called on Wm. Nightingale for any account of his actings and doings in the control and manage-
242 ment of said property; never paid him anything nor received any payment from him; never exercised any supervision over him, and never had any rights or obligations in connection with the same.

18. To the eighteenth interrogatory the witness answers: The firm of Jackson, Lawton & Basinger were employed and did appear for the defendants in an ejectment suit brought by Katie Sanger against Wm. Nightingale in McIntosh superior court for the recovery of Camber's Island. As in all other business of the firm in McIntosh county, we relied on Maj. Basinger to attend to the defense of this case, conferring with him, however, at intervals as to the points involved. We appeared for the defense in consequence of the interest which the late firm of W. Cumming & Co. had in Camber's Island. As most of the interviews touching this defense took place with Maj. Basinger, I do not recall any conversation during that time with Wm. Nightingale or any other person in which it was claimed that Camber's Island was held by Wm. Nightingale in trust.
243 I did know then, however, as I had known before, that he expected to account to his sisters and brother in the proceeds to arise from the management of Camber's Island. Although he alone held the legal title to it, I have heard, though I do not know of my own knowledge, that Wm. Nightingale has since executed a paper in which is contained a declaration of the relations between himself, his sisters, and his brother sustain to the Camber's Island property.

19. To the nineteenth interrogatory the witness answers: I avail myself of the general terms of this interrogatory to add that there was a time several years before the foreclosure of the mortgage on Camber's Island and before the conveyance of Dungeness to Mrs. Molyneux when Mr. Nightingale was making an earnest effort to settle his debts and get a release from all his creditors, retaining such portion of his property as would enable him still to work for and support his family. While there was a prospect or hope
244 of a compromise and such a release from all his creditors as would set him on his feet again, Mrs. Molyneux was willing to accept a conveyance of Dungeness or of any other property of equal value and give a complete release, provided Mr. Nightingale could make arrangements with all his other creditors satisfactory to himself, but only on that condition. In this posture of affairs she gave me, as her attorney, large discretion and authority. Mr. Nightingale made the effort to accomplish this object, and used the conditional consent of Mrs. Molyneux to a compromise in order to induce others to consent. He failed utterly to secure the consent or to make the compromise, and Mrs. Molyneux was left free to assert her legal rights.

A. R. LAWTON.

Answered, sworn to, and subscribed before us this 25th day of November, A. D. 1882.

J. LAWTON WHATLEY, [L. S.]
Commissioner.
J. W. BURROUGHS, [L. S.]
Commissioner.

245 Letter "A."

SAVANNAH, *May 5th*, 1877.

John K. Nightingale, Esq., Brunswick, Ga.

DEAR SIR: In response to your memorandum note of yesterday, I beg to say that an examination of your father's papers in our hands shows that they all relate to the rice plantation purchased at sheriff's sale by your brother. As these properly belong to him, I send them this day by express to Wm. Nightingale, Esq., Brunswick.

Yours truly, A. R. LAWTON.

Letter "B."

SAVANNAH, *May 5th*, 1877.

William Nightingale, Esq're, Brunswick, Ga.

DEAR SIR: We herewith enclose to you all papers relating to the purchase of the plantation now in your possession, as they rightfully belong to you.

Very truly & respectfully,
JACKSON, LAWTON & BASINGER.

Please acknowledge.

246 Endorsement on envelope containing foregoing depositions: U. S. circuit court, so. dist. of Georgia. No. ——. W. H. M. Sanger *versus* William Nightingale *et al.* Depositions of A. R. Lawton & Wm. S. Basinger, witnesses on behalf of compl'ts. Filed the — day of ——, A. D. 18—. To the clerk of the United States circuit court, Savannah, Georgia. Signed across seal: J. W. Burroughs, commissioner; J. Lawton Whatley, com'r; John W. Burroughs, commissioner; J. Lawton Whatley, com'r. Received from J. Lawton Whatley, one of the commissioners. — open court, and filed this 30th day of November, 1882. Wm. M. Heyward, deputy.

247 *Testimony and Proofs Offered in Evidence by Complainant, but not Allowed to be Read.*

Interrogatories for Wm. Nightingale and Jno. K. Nightingale.

In the 5th Circuit Court of the U. S. for the Southern Dist. of Georgia. E. D. In Equity.

W. H. M. SANGER, Compl't,
and
WM. NIGHTINGALE, WM. NIGHTINGALE, as Executor, &c., &c., *et als.*, Defendants.

Bill for relief, &c., &c.

Interrogatories to be propounded by the complainant to two of the defendants, to wit, William Nightingale and John K. Nightingale

Intg. 1, for both the witnesses. Do you know the complainant in this action, and what relation do you bear to each other and the other defendants?

Intg. 2, for both the witnesses. State whether or not you knew Phineas M. Nightingale in his lifetime and in what way he was related to you.

248 Intg. 3, for both the witnesses. State where you lived and in what business or employment you were engaged in the years 1868, 1869, 1870, & 1871, 1872 & 1873. Did you, or not, live with Phineas M. Nightingale, or on any place or land belonging to him, and were you or not employed by him or engaged with him in rice planting or any other business or occupation? Were either of you married during the said years 1868, 1869, 1870, 1871, 1872, & 1873, or had you been married before or have you married since those years?

Intg. 4, for both the witnesses. State whether or not you knew of the giving of the mortgage by said P. M. Nightingale to Wm. H. M. Sanger at the time it was executed, or soon thereafter, and if you did know of it state fully and particularly all you knew concerning it and how and from whom you derived your information. Were you not fully cognizant of the negociations between P. M. Nightingale & W. H. M. Sanger which led up to and included the giving of said mortgage on Camber's Island?

249 Intg. 5, for both the witnesses. State whether or not you knew what was done with the money advanced to P. M. Nightingale by W. H. M. Sanger, and which said mortgage was given to secure. Was it or not used by said P. M. Nightingale to stock, provision, and cultivate said Camber's Island? If the whole of it was not so used then what part was so applied, and what was done with the balance?

a. Intg. 6, for both the witnesses. Look carefully at the annexed letter, No. 1, dated Brunswick, Geo., April 5, 1869, and state in whose handwriting it is and what you knew of it when it was written, and what you have learned about it since. The last sentence of said letter says: "Please to come out and see how we are pro-

gressing." To whom did it refer as we? Was it to the person who signed it, P. M. Nightingale, and you, two witnesses?

b. Look also at letter No. 2, dated 12 April, 1869, and state by whom that was written and signed. What did you know of that letter when it was written, and what have you learned since? To whom did it refer when it says: "We are progressing very well?"

250 *c.* Look at the letter No. 3, dated 17 May, 1869, and state by whom it was written and signed. It says: "The boys manage the place very well, indeed—better than I can do myself." Whom were the boys and what place was it so referred to? State what the letter means by stating: "I am, of course, much occupied in arranging for a very early return to your city with maps, plans of house at Dungeness, &c., &c." Give the explanation of this language fully & specifically.

d. Look at letter No. 4, dated Aug. 23, 1869, and state by whom it was written & signed? What balance sheet was referred to? Who was "my son William," and of what crop was he to give a full account? Did William Nightingale, one of the witnesses now being examined, go on to New York with the letter No. 4; and, if so, for what purpose and at whose instance & request?

e. Look at the letter No. 5, dated 23 Aug., 1869, and state by whom it was written, and what connection, business or otherwise, did the writer hold toward P. M. Nightingale. Look also at the balance sheet, attached to said letter No. 5, and state in whose hand-

251 writing it is, and what you knew about it at the time it was made out and forwarded to W. H. M. Sanger. Does it not correctly state the indebtedness of P. M. Nightingale at that time to W. H. M. Sanger at $56,583.56, as set forth in the two items therein?

f. Look at letter No. 6, dated September 21, 1869, and state by whom it was written and to whom it refers as "Mr. Nightingale." Who is the Johnnie to whom the letter refers as having the greater part of the rice cut, and to rice on what place does it refer?

g. Look at letter No. 7, dated 24 Dec'r, 1869, and state by whom it was written.

h. Look at letter No. 8, dated 4 Jan'y, 1870, and state by whom it was written & signed.

i. Look at letter No. 9, dated Jan'y 10, 1870, and state by whom it was written and signed, who was the Capt. Troup referred to, and what was the business spoken of in letter No. 9. What did you know about a vessel to carry rice from the Altamaha river to New York, and had you endeavored to secure such a vessel? What mortgage is referred to?

j. Look at letter No. 10, dated 23 Jan'y, 1870, and state by whom it was written & signed?. What mortgage is again referred

252 to in this letter? Who gave this mortgage to the clerk to be recorded? Who is the Mr. Williams spoken of in this letter; what note is referred to; what mortgage is meant in speaking of a transfer of one, and what titles to what land were doubtful?

k. Look at letter No. 11, dated 28 Jan'y, 1870, and state by whom it is written and to whom; what mortgage is referred to at the

beginning of the letter, and who is Willie mentioned in the post-script.

l. Look at the letter No. 12, dated 30 Jan'y, 1870, and state by whom it was written & signed.

m. Look at the letter No. 13, and dated 31 Jan'y, 1870, and state by whom it was written. What mortgage was therein referred to?

n. Look at letter No. 14, dated 7 Feb'y, 1870, and state by whom it was written & signed. If not written by either of you, did you know of its contents or of the determination of your father, P. M. Nightingale, at the time it was written, and as therein expressed, to try and settle with his creditors?

o. Look at the letter No. 15, dated March 5, 1870, and state by whom it was written & signed. What plantation was therein
253 referred to as having been rented out, and to whom and upon what terms was it so rented? To what son did P. M. Nightingale refer when he says, on the 2d page of that letter, "With the assistance of my son," and had this son been made acquainted with his father's wishes in the matter spoken of?

p. Look at the letter No. 16, dated April 30, 1870, and state by by whom it was written & signed. At the time this letter was written where were you living and what were you doing? In what condition was Camber's Island and who was planting it? Were you not as fully informed of the financial condition and embarrassments of P. M. Nightingale as they are set forth in this letter and in letter No. 17, sure to be asked about?

q. Look at letter No. 17 and statement thereto annexed, dated June 17, 1870, and state by whom it was written & signed. Were you not cognizant of and fully acquainted with the financial condition of P. M. Nightingale on 17 June, 1870, and with the contents of the letter No. 17? If you had not seen the letter did you not yet know the facts to be as he had stated them to W. H. M. Sanger in this letter?

254 *r.* Look at the letter No. 18, dated New York, 25 June, 1870, and state what you knew of it, and if it be a correct copy of a letter written by W. H. M. Sanger to P. M. Nightingale. Did you ever see the original of this letter, and where is it now? Did you know of this letter when it was rec'd by y'r father?

s. Look at letter, No. 19, dated 4 July, 1870, and state by whom it is written & signed. If neither of you wrote this letter state whether or not you knew of its contents at the time it was written. Was not this the very first time, to your knowledge, that your father signified to Sanger that there was any heir or heirs upon Camber's Island other than the heir of the mortgage that Sanger himself held?

t. Look at the letter, No. 20, dated 26 July, 1870, and state by whom it was written and signed. If neither of you wrote this letter, still did you not know of its contents, or of the design and desires of your father, as set forth and expressed therein? Did you not have full knowledge of the purposes and efforts of your father to settle and compromise his debts with Sanger and others, as is set

forth in this letter? When was P. M. Nightingale in New
255 York, as alluded to in his letter of 26 July, 1870?

u. Look at the letter, No. 21, dated 7 Sept'r, 1870, and state by whom it was written & signed.

v. Look at the letter, No. 22, dated Oct. 14, 1870, and state by whom it was written, and to whom written. Did you know of this letter being written at the time it was; or, if not, did you know of the truth of its contents at the time it was written?

w. Look at the letter, No. 23, dated Dec'r 26, 1870, and state by whom it was written & signed. To what suit does the letter refer? Who was the plaintiff in said suit? Where and by whom was the suit instituted, and for what claim? State whether or not the claims held against your father by Mrs. Molyneux were ever settled by deeding his interest in Dungeness to her, or to the adm'r of Mr. Molyneux.

x. Look at the letter, No. 24, dated Sept'r 8th, 1872, and state by whom it was written and signed.

Intg. 7, for both the witnesses. State fully, particularly, and clearly all that you know, or have been told by P. M. Nightingale, his agents or attorneys, in regard to the foreclosure of the mortgage on Cam-
ber's Island, in the superior court of McIntosh county, which
256 mortgage was originally given to Charles Spalding, and by him transferred to Molyneux. What was the agreement and understanding, tacit or openly expressed, between your father, yourselves, and the other members of your family, as to the foreclosure of this mortgage on Camber's Island? Who bought in the property at the foreclosure sale, to whom was the deed made, what was bid for the island, and by whom, and how was it paid for? Did not one of you make a note for $30,000.00 for the bid made at this sale; and, if so, what were the reasons for making said note, to whom was it made payable, why was it made at all, and what has become of the note? Has it ever been paid, and if not, why not? Under whose legal advice was the sale and note made, and how much was the negro sheriff, James R. Bennett, paid for selling the land under the mortgage *fi. fa.?* Was Camber's Island put up and sold under the mortgage *fi. fa.*, issued from McIntosh superior court, fairly and in good faith, or was the sale made for the purpose of defeating the mortgage lien of Wm. H. M. Sanger on
the said island, and with the main design of saving the
257 island to the Nightingale family? Did Mrs. Molyneux, the administratrix of the estate of Mr. Molyneux, or any other person, ever claim anything from the sale of said Camber's Island under the said mortgage *fi. fa.*, or did they ever authorize said sale, or claim to have any right, title, or interest in Camber's Island under said Spalding mortgage after P. M. Nightingale had settled his indebtedness to the Molyneux estate by the deed to Dungeness? If Mrs. Molyneux, or any one acting for the estate of Mr. Molyneux, ever designed or attempted to invest the children or family of P. M. Nightingale with the lien that Molyneux had upon Camber's Island, then when, how, by whom, and under what circumstances was such interest conveyed or attempted to be conveyed to the

children or family of P. M. Nightingale by Mrs. Molyneux or anyone interested in the estate of E. Molyneux? Was there, or was there not, ever any written transfer, assignment, deed, or conveyance by Mrs. Molyneux, or any one acting for her or for the estate of E. Molyneux, of any lien, interest, right, or title in or to
258 Camber's Island made to P. M. Nightingale, his children, or his family? If so, state what such writing was, and attach it, or a copy thereof, to your answer.

Intg. 8th, for both witnesses. Who is the present occupant of Camber's Island, and what is its condition? Is it under cultivation or not; and if so, how much of it is being cultivated? Who has charge of said island, and to whom does it belong?

Intg. 9, for both the witnesses. Are either of you indebted to the late firm of W. Cumming & Co., of Savannah, or to Henry Hull, or Henry Hull & Co., the successor of said W. Cumming & Co.? If you are so indebted, is the said Camber's Island in any manner bound for said debt, or any part thereof? And if it is so bound, in what way is it so bound, and what papers are there evidencing such lien? If any, attach copies of them or it to your answers?

Intg. 10, for both witnesses. Who managed, control-ed, &
259 cultivated Camber's Island during the years 1870, 1871, 1872, & 1873, and who received the rents, income, and profits of such cultivation for such years?

Intg. 11, for both the witnesses. Who paid the legal fees of Jackson, Lawton & Basinger, att'ys in Savannah, for the foreclosure of the Spalding-Molyneux mortgage, and — you or either of you or P. M. Nightingale paid them? State how much was paid and where & how. Was Mr. W. Rob't Gignilliat or any other attorney employed by P. M. Nightingale, or either of you, to resist said foreclosure suit in McIntosh sup'r court; and, if not, by whom and for what purpose was Mr. Gignilliat employed about said suit and the sale of Camber's Island under said foreclosure?

Intg. 12, for both the witnesses. Did or did not Mrs. Molyneux or Mr. John Cunningham or Mr. Allan Fullerton, as agents of Mr. Molyneux or his estate, or Mr. Johnston, as adm'r of said estate, or either of them, ever consent or agree or contract verbally or in writing with P. M. Nightingale or his agents or attorneys, or
260 with you, that the Spalding-Molyneux mortgage might proceed to foreclosure and sale under such foreclosure for the use, benefit, or advantage of P. M. Nightingale, his family, or his children, or any of them? If so, then state how, when, and where such agreement was made, upon what consideration was it founded, and was it not in writing, and, if in writing, attach a copy to your answers.

Intg. 13, for Wm. Nightingale and John K. Nightingale. You say in your answer to the bill of complaint in this case that George H. Johnston, as adm'r of the estate of E. Molyneux, dec't, transferred and assigned to the children of P. M. Nightingale the judgment obtained in Glynn county, and also "the mortgage aforesaid then in process of foreclosure" in superior court of McIntosh county; state fully and particularly how and at what date such transfer was

made, who was present, and was it done in writing or by words merely. If in writing, attach a copy of such writing to your
261 answer, and state where is the original transfer or assignment. State whether or not such assignment & transfer was made with the knowledge and consent of Mrs. Molyneux, widow of E. Molyneux; and, if you say that it was, state fully and particularly how you knew of such consent; how and when and to whom did Mrs. Molyneux give such consent; and, if in writing, attach a copy to your answers and state where the original is.

Intg. 14, for both the witnesses. You state in your answer to the bill of complaint that after the conveyance of Dungeness by P. M. Nightingale to Mrs. Molyneux "a question arose whether under the said will (of Mrs. Louisa C. Shaw) the said Phineas M. Nightingale had any more than a life estate in the said property with remainder to his children." State fully and particularly how, when, and where such doubt arose. Who first suggested any such doubt? Was advice of counsel learned in the law sought and obtained upon the question; and, if so, by whom and whose
262 advice and with what result? Where is the will of Mrs. L. C. Shaw? If you can do so attach a copy of it or the original to your answers; or if you can do neither, then set forth as fully as you can that part of said will which was doubtful.

Intg. 15, for both the witnesses. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

HENRY B. TOMPKINS,
WALTER A. WAY,
Sol's for Compl't.

Letter No. 1.

BRUNSWICK, GEO., *April 5th*, 1869.

MY DEAR SIR: I drew on you a few days since for $3,000 at thirty days. The plantation is progressing very well & everything promising. I shall get planted by the last of this month five
263 hundred acres, possibly six hundred, from which we may most reasonably expect to make from thirty to forty thousand bushels. I send by express from Savannah the acc't for sixty-seven; sixty-eight will follow very soon. The delay in the acc'ts I will explain to you here or in New York. I have been quite sick for some time, but am recovering slowly. Please to come out and see how we are progressing.

Yours most truly, P. M. NIGHTINGALE.

Wm. H. M. Sanger, Esq're.

Letter No. 2.

BRUNSWICK, *April 12th*, 1869.

MY DEAR SIR: I have been quite indisposed for some time, and propose to take a short trip to New York for my health and to see you. I shall go on by steamer, and may be there next week, and shall probably stay only a few days. We are progressing very well on the plantation, and everything there is very promising. We are necessarily now at unusual expense for seed rice (mine being both short and defective), extra Irish laborers, which were indispensable to get in the crop in time, and extra provisions which
264 I had to lay in at this time; all these will be diminished directly and our expenses proportionably decreased until harvest time. I hope to be permitted to meet you well and bring you back with me to gladden your heart with the sight of a fine crop and cheerful faces.

Yours most truly, P. M. NIGHTINGALE.

W. H. M. Sanger, Esq.

Letter No. 3.

BRUNSWICK, GEO., *May 17th*, 1869.

MY DEAR SIR: You will be glad to receive from me good accounts from the plantation. I was there day before yesterday, and everything was progressing finely. The boys manage the place very well indeed, better probably than I can do myself. The rice is feeling and shows by its colour the very cool weather we have been having for the last three weeks, but it is all right and will come out as soon as the warm sun shines on it for a few days. I got home on Tuesday night, and found all well. I am of course much occupied in arranging for a very early return to your city, with maps,
265 plans of house at Dungeness, &c., &c.,

Yours very truly, &c., P. M. NIGHTINGALE.

Wm. H. M. Sanger, Esq're.

Letter No. 4.

BRUNSWICK, *Aug. 23d*, 1869.

MY DEAR SIR: I enclose to you to-day the balance-sheet for 1868. My son William will hand you this letter and give you a full account of the crop, which I am happy to say is satisfactory.

Yours truly, &c., P. M. NIGHTINGALE.

W. M. H. Sanger, Esq.

Letter No. 5.

BRUNSWICK, GA., *Aug. 23rd*, 1869.

W. H. M. Sanger, Esq.

DEAR SIR: Please find enclosed balance-sheet of P. M. Nightingale's books to Jan. 1, 1869, which I forward at his request.

Yours very resp'y, H. A. KENRICK.

266 *Balance-Sheet of P. M. Nightingale's Books to and Including December* 31, 1868.

			Dr.	Cr.
20		W. A. Wilcox	7[illegible]5	
25		Dan'l Bigbry, Jr.	3[illegible]0	
33		Young & Langdon	[illegible]0	
57		Hamilton Jackson	2[illegible]9	
189		Claghorn & Cunningham	21[illegible]8	
198		Perdicani & Hog	[illegible]50	
205		O. Cogdell	[illegible]48	
205		Cogdell & Co.	[illegible]66	
209		W. S. Finney & Co.	[illegible]22	
223		G. Friedlander & Co.	9 50	
226		L. N. Whittle	85 00	
240		Janies Williams	20 00	
"		Julia Williams	20 00	
244		Plantation ac., 1867	28,064 06	
253		W. M. Tunno & Co.	1,615 14	
275		Lewis Woodruff	65 00	
281		P. M. Nightingale	3,053 22	
291		Estate of O. Butler	3 85	
373		Plantation ac., 1868	25,760 41	
13		W. H. M. Sanger	------	26,083 50
31		Palmer & Deppish	------	35 90
190		J. T. Wallman	------	57 76
197		Gordon & Mastin	------	6 15
199		T. Hilton & Sons	------	55 39
206		Perry Hardee	------	317 60
254		W. H. M. Sanger	------	30,500 00
273		Davant & Waples	------	1,259 34
	284	Minton & Roughan	------	20 62
267	291	New books	------	961 90
	372	Suspense ac.	------	13 90
			59,312 06	59,312 06

A true copy.

H. A. KENRICK.

Letter No. 6.

SAVANNAH, *Sept.* 21*st*, 1869.

MY DEAR SIR: For the last three or four weeks Mr. Nightingale has been very ill, and is just beginning to improve and gain a little strength. We came here some ten days ago for a change and to consult Mr. Nightingale's physician. He left his bed to come here, and has been in bed ever since he arrived here, and has been very nervous and much depressed. I am happy to say, however, that he is now decidedly improving, and we hope to go in a few days to the mountainous region of Georgia, when he has been recommended to spend a few weeks by Dr. Arnold. He begs me to say that the crop is doing very well indeed. Johnnie has the greater part of the rice cut and

hopes soon to send some to market. He will probably write to Messrs. I. R. Cuyler & Wiggins for a vessel before very long. With kind regards from Mr. Nightingale and myself, believe me very truly y'rs,

M. K. NIGHTINGALE.

W. H. M. Sanger, Esq're., 134 Church St.

268 Letter No. 7.

BRUNSWICK, *Dec. 24th*, 1869.

MY DEAR SIR: I have just got your telegram sent to me by post from Savannah, where I will go on Monday, the 28th, to arrange matters as near to your wishes as is possible. I came home to hurry up a cargo of rice—to help the advance. I presume I shall be able to send you three d'fts of five thousand each, at thirty, sixty, & ninety days, & will do better if it can be done, but I find money very tight there at about this time—toward morning & on the eve of Christmas. I can get no one to write for me, so you will have to make out with my own scrawl.

Yours very truly, P. M. NIGHTINGALE.

Wm. H. M. Sanger, Esq're.

Letter No. 8.

SAVANNAH, *Jan'y 4th*, 1870.

MY DEAR SIR: I am disappointed and chagrined beyond conception. I have been here several days trying to raise money for you, and I can do nothing, either in the way of getting cash or acceptances. Rice has gone down to nothing, and the monetary
269 condition of things is distrustful & deplorable. I know you will be annoyed when you should be very happy, but you must believe that I have done my very best, & feel, I am sure, worse than you can conceive. I can do nothing now, but as soon as things get a little settled, and some cotton is sold to relieve the present pressure, I am promised all that we want. Be assured that I will not delay my efforts, & will do all that I can to meet your wishes. With my warmest congratulations & best wishes for your present & future happiness, I am your sorrowful friend, &c., &c.,

P. M. NIGHTINGALE.

Wm. H. M. Sanger, Esq're.

Letter No. 9.

BRUNSWICK, *Jan. 10th*, 1870.

MY DEAR SIR: I wrote to you from Savannah a few days since a very desponding letter. Everything was so blue there that I had to yield for a time to its influence, but I am going there again in a few days (as soon as I have shipped five thousand bushels of rice) to succeed in some way or other in furnishing you money or acceptances,
270 as I proposed, for your use. I still hold the mortgage unrecorded. You will have to wait for it until I find a clerk of McIn-

tosh Co. court. The present occupant is either absent or dead, I cannot ascertain which. His residence is some 25 miles from here, and since my return I really have not had the time to go there. Capt. Troup will write you himself about his business. The Finney business is, I believe, all right and in proper progress of legal completion. With our united thanks for your kind remembrance of us and our most sincere wishes for the full measure of your matrimonial happiness,

I am most truly your friend, &c.,

P. M. NIGHTINGALE.

I find it utterly impossible to get a vessel suitable for the Altamaha river to carry a cargo of rice to New York at this inclement season of the year.

Wm. H. M. Sanger, Esquire.

Letter No. 10.

BRUNSWICK, GA., *Jan. 23d*, 1870.

271 MY DEAR SIR: I have just received your letter of the 13th, which must have crossed one of mine to you explaining everything to the best of my ability. I have just shipped a cargo of rice to Savannah, the first that I have been able to get off since I came home, from the want of vessels, and none can be had of suitable size for my place to take a cargo to New York. I am going to Savannah in the morning to arrange matters there for you, and shall not return until I have accomplished it in some way or other. The mortgage has not yet been returned to me. I sent for it yesterday, but the negro, who is the recording officer, had not found time to attend to it. He promised to have it ready for me by Wednesday, the 26th. I have directed Mr. Williams if he can find any one to pay the note to you with the interest to transfer the mortgage, as I find by examination that the titles to the land are doubtful. Capt. Troup promises to write you, but he has no money, and is, as all of us are, worried for labor. I hope to write you favourably in a day or two from Savannah.

Yours truly, &c., P. M. NIGHTINGALE.

Wm. H. M. Sanger, Esquire.

272 Letter No. 11.

BUTLER ISLAND, *Jan'y 28th*, 1870.

MY DEAR FATHER: Your mortgage has not yet been recorded, but shall be sent you as soon as it is. I send by John eleven chickens and seven doz. eggs, and will bring more on Sunday, if possible; will also send you by "Baker" to-night three bushels sweet potatoes; send for them to-morrow morning. I am feeling better to-day and will, no doubt, with care be able to stay with Miss Butler for one year at any rate. I hope you will find dear little Camden better on your return to Brunswick. Give my best love to all and

don't tell any one I felt so badly yesterday, it will only worry them and do no good.

Your son, J. K. NIGHTINGALE.

Tell Willie I shall certainly go with him on Saturday night. I want the carpenter by next Tuesday's boat.

Letter No. 12.

BRUNSWICK, GA., *Jan. 30th*, 1870.

MY DEAR SIR: I have just received your letter of the 22nd
273 inst. I wrote to you on the 23rd. The extreme illness of my little grand-aughter has detained me here a week. She is now convales-*ant*, and I shall go to Savannah on Monday with full hope of sending you the acceptances at once. I enclose my son's note about the mortgage to show you that I am not neglecting the matter, but doing all in my power to accomplish your wishes. The recording clerk of McIntosh Co. is a negro from Boston. He is, in violation of law, also light-house keeper, & lives, I understand, 25 miles from his office, where he should be all the time. He has the deed and I cannot get it from him or have any one else to record it. All I can do is to hurry him up as fast as possible and get the paper completed & out of his hands, which I am using every possible means to do with all speed. My son will see him again at once, & as soon as the paper is recorded will forward it to you without waiting my return. Nothing else or more can be done with this dark-complexioned, irresponsible, & unlawful military government. I am exceedingly grieved & annoyed at these delays, which I could
not in any way prevent. It is a shame for such incompetent
274 & irresponsible persons to hold office anywhere.

I am truly yours, P. M. NIGHTINGALE.

Wm. H. M. Sanger, Esq're.

Letter No. 13.

DARIEN, GA., *Jan'y 31st*, 1870.

MY DEAR SIR: As per request of my father, I hasten to forward you the mortgage that I have at last succeeded in obtaining from the clerk of the sup. court of McIntosh county.

Very truly yours, J. K. NIGHTINGALE.

To W. H. M. Sanger, 134 Church street, N. Y.

Letter No. 14.

BRUNSWICK, GEO., *Febr. 7th*, 1870.

MY DEAR SIR: I have just returned from Savannah, where, much to my surprise, I entirely failed in making arrangements for the acceptances. My crop, owing to the depreciation in value of rice, sold for little more than half what I expected, and I find, to
275 my inexpressible surprise, that my plantation and family expenses will absorb nearly all of the balance now in the hands

of my factors. I cannot tell you, nor can I see at once, how this should be, but it seems it is so, and I in consequence feel so distressed and overcome that I have made up my mind to give up and turn my property over to my creditors. Under these circumstances I think it will be decidedly to your interest to come out and see for yourself the condition of the plantation and confer personally with me and my other creditors. It will take you only one week to come and return, and will be, in my judgement, the course most to your advantage. Telegraph me immediately, care of Davant, Waples & Co., Savannah, what you decide to do, and they will forward it at once to Brunswick, where we now have daily mail communication with Savannah. I cannot close without an earnest expression of sincere regret for the inconvenience and embarrassment to which this aspect of my affairs may expose you. It was entirely unforeseen by
276 me, and I can only hope that some settlement may be possible which will relieve you.

Yours truly, P. M. NIGHTINGALE.

To W. H. M. Sanger, 134 Church street, New York.

Letter No. 15.

BRUNSWICK, *March 5th*, 1870.

MY DEAR SIR: I received your telegram, and yesterday, on my return from the plantation, I got your letter of the 25th. I have rented out my plantation for very little, in order to have it planted, so that it might not go again to ruin, and am trying to close up my affairs to find out my condition myself and at the same time make exhibit to all those interested. My crop last year cost between thirty and forty thousand dollars. I apprehend when it is all figured up it will be found to be nearer forty than thirty, and my other expenses seem to have been enormously large—far beyond what I had supposed them to be. As soon as I can get a full ex-
277 position of my condition I will submit it to you and advise with you before I take any further action, and, of course, will be very much influenced by your wishes and advice. At present no good could result from my going North or your coming South. At the time I wished you to come out I thought it would probably be best for you to take the plantation and make this crop, with the assistance of my son, for your individual benefit, and I still think it would have been wise for you to do so. I am very much worried and perplexed, and do not feel like writing more than is absolutely necessary, so you must accept my thanks for your very kind letter, and believe me,

Truly yours, P. M. NIGHTINGALE.

W. H. M. Sanger, Esq.

Letter No. 16.

BRUNSWICK, *April 30th*, 1876.

MY DEAR SIR: I have signed and therewith enclosed to you sixteen notes, amounting to twenty-two thousand dollars, all of
278 which you will have to take up at maturity if you use them, as I have not the remotest prospect of being able to pay them; I am going, as soon as I can get Mr. Kennick to finish up my accounts (which he makes necessarily or intentionally everlasting, to my discomfort and great annoyance), to submit a proposition of adjustment to all my creditors, and if it is not acceptable I must go into bankruptcy at once. I should like to see you, but have no hope of being able to go North. I am doing nothing in planting, and am living upon what we can all gather up from day to day.

I am sorrowfully yours, &c.,

P. M. NIGHTINGALE.

W. H. M. Sanger, Esq're.

Letter No. 17.

BRUNSWICK, *June 17th*, 1870.

MY DEAR SIR: I enclose a statement of my financial condition and enquire if you are willing to take one-half of my Camber's Island rice plantation for my indebtedness to you. It is the best that I can do for you. The property is really worth what I
279 value it at (the whole place, $150,000), and will, I have no doubt, when things are established and labor properly regulated, sell for that amount. My indebtedness now is greater than I can manage under existing circumstances, and I am determined to relieve myself by a compromise with my creditors, if I can; if I cannot, by going at once into bankruptcy and taking a fresh start at sixty-seven years of age. Mrs. Molyneux, who is my largest creditor, has consented to take my Dungeness place and release me in full, provided I can arrange with you and others satisfactorily to myself. She is abroad, residing almost entirely in England, and the time occupied in getting her decision has delayed my communication to you. Please to let me hear from you immediately and oblige your friend,

P. M. NIGHTINGALE.

W. H. M. Sanger, Esq're.

280 *Debts.*

Mrs. Molyneux	130 000
W. H. M. Sanger	52 000
Charles Spalding	18 000
Mrs. Greene, est.	8 000
Mrs. Pratt	3 000
Mr. Morris	2 000
Mr. Stafford	3 000
Messrs. Devant, Waples & Co.	2 500
	$218 500

Assets.

Cambers' Island rice plantation,	1,000 acres	$150 000
Dungeness,	4,000 "	80 000
Wakulla land, Florida,	1,000 "	8 000
Orange Lake,	1,000 "	5 000
Scattering lands,	2,000 "	4 000
Thirty-seven shares M. & B. R. R.		1 000
2 tracts land, Whitfield Co., Ga.		2 000
		$250 000

Letter No. 18.

NEW YORK, *June 25th*, 1870.

MY DEAR SIR: I have rec'd your letter of the 17th inst., and would say I hardly see how I can comply with your request, as I have borrowed almost the entire am't of the mortgage, and the notes I have discounted at the bank, or most of them. I will be
281 glad to help you all I can, and I will say this: That if you can get any of your friends to take my claim within thirty days I will accept forty thousand dollars ($40,000) in full settlement of it, and will release everything; or if you deed the entire place to me without any encumbrances except my own I will accept it in full, & will further give you the privilege of taking it back again any time within twelve (12) months by your paying me the sum of fifty-two thousand doll's ($52,000) and interest, provided that it is accepted within thirty (30) days. It is impossible for me to do any different at present, as I have borrowed almost the entire amount of the notes & the mortgage, and I would not make any change without the security was absolutely good; but I want you to feel that I will do all consistent with my ability and I will. If possible, would accept your proposition at once, but it is not within my control. Let me hear soon again.

Your friend, WM. H. M. SANGER.

P. M. Nightingale, Esq.

Copy June 25th, 1870.

C. F. CHICHESTER.

282 Letter No. 19.

BRUNSWICK, GA., *July 4th*, 1870.

MY DEAR SIR: I have received your letter of the 25th of June and wish very much indeed that I could spare the means to go on and confer with you, but it seems impossible at this time. I can barely get along and really cannot spare a dollar. I feel no hesitation whatever in assuring you that the arrangement I have proposed to you is the very best that can be made, both for you and myself. Indeed, I feel perfectly assured that it is the only way that you can be saved from a total loss. If I go into liquidation at once Mrs. Molyneux and Mr. Spalding, who hold the first lien on the property, will absorb every dollar that the whole property can

bring under a forced sale at this time, when everything here is unsettled and depressed. I cannot command a dollar to pay you, and I cannot ask my friends to assist me until I can see my way clear out of my present difficulties, so that I can assure them that their assistance will be available to me and my family. (The
283 property I am offering you will, at a time when things become settled and the labor is available, bring more than your claim amounts to, and I have no doubt, if I can settle up my affairs so as to present a *c*lear sheet, that any friends will assist me to purchase back that portion of the plantation that I propose to convey to you.) I do, therefore, most emphatically and distinctly assure you that you will be standing in your own light and injuring yourself more even than you will injure me by preventing this compromise with my creditors, which I hope to make satisfactory to all the parties—you more especially than all. I do not intend you shall lose a dollar if I can help it; that is my hearty desire and first object. Think it over calmly and write me at once, if you please, as I am stayed in all further proceedings until I get your answer.

I am very truly yours, &c.,

P. M. NIGHTINGALE.

W. H. M. Sanger, Esq're.

284 Letter No. 20.

BRUNSWICK, GEO., *July 26th*, 1870.

MY DEAR SIR: I have received your letter of 14th inst. Mouth cannot utter words more distinct & plain than those used by me in the southeast corner of the eating-room in the Astor House on that bitter cold Monday, at breakfast, when I told you of the previous mortgage on Camber's Island, and you asked me when it was given. I replied previous to the war, & you said it made no difference; you only wanted it to assist you in raising money. This is all I shall say on this subject, because it will do no good to say more, & may do some harm. I am determined to close up my affairs finally and as soon as possible. With this view, therefore, I have partitioned out my property among my creditors justly & equitably to the best of my ability and I am happy to say satisfactory to all except yourself, to whom I have really offered the most valuable portion at about one-half its intrinsi*ck* value in ordinary times when the country is stable & rice is appreciated. If you acceed- I
285 will commence again next spring freed from all encumbrances, and my friends who really wish to serve me if I put myself in a position to be served will, I believe, help me to purchase your position of the island on your own terms. If you decline I shall still go in with the settlement in law, but it will take me two or three years to do what can now be accomplished in four months, which will injure me materially at my time of life and damage you seriously, I apprehend. I wish to save and satisfy you, and will do everything for that purpose except to starve my family & myself to death, which I should do if I gave you all of Camber's, as you propose. You must, however, make your own choice & I

must abide by it and do the best I can. It will be grievious to me to have our kind & friendly relations interrupted, & I do most sincerely hope it may not be necessary or desirable on your part. I am sure it cannot be on mine.

Very truly yours, &c.,

P. M. NIGHTINGALE.

Wm. H. M. Sanger, Esq're.

286 Letter No. 21.

BRUNSWICK, GA., *Sept. 7th*, 1870.

MY DEAR SIR: I have been very much absent from home, or your letter of the 18th ult. would have been answered sooner. You are nearly but not quite right in your recollections of my conversation with you about the previous mortgage on Camber's Island. I told you of its existence, but at the same time said I believed it was valu-less in law, as it was partly for slaves that had been taken from me. I said exactly and no more than what I and every one else thought at that time, and where it was for slaves only I was right, but where land is involved, as in my case, the courts, especially the United States courts, have held differently, and so far I was mistaken, but I did not conceal anything from you or do or say anything intentionally to mislead you, as your letter of the 14th of July would seem to insinuate, and which I unhesitatingly and unequivocally repel. I am very sorry not to have satisfied you that all my views were for the best, but I shall say no more, and only beg
287 of you to come out and see and act for yourself. I am fully persuaded that if you were here for one day only we could arrange everything to our entire satisfaction and mutual protection.

I am, with the utmost kindness and good-will & respect,

Yours, &c., P. M. NIGHTINGALE.

W. H. M. Sanger, Esq're.

Letter No. 22.

BRUNSWICK, *Oct'r 14th*, 1870.

MY DEAR SIR: I replied to your letter of the 24th ult., stating that I was entirely unable to pay my notes given to Mr. W. H. M. Sanger, & that I had made a full exhibit of my condition financially, and had offered land, which was all that I had to give, to my creditors, all of whom had accepted of my proposals for a settlement but Mr. Sanger, and that I was entirely and totally unable to do anything more—which is all that I can say in reply to y'rs of the 4 inst.

Your ob't serv't, P. M. NIGHTINGALE.

288 Letter No. 23.

BRUNSWICK, *Dec. 26th*, 1870.

MY DEAR SIR: I have no money at this time, and, as far as I can see, am never to be any better off. I was sued at the last court for about sixty thousand dollars, which will more than swallow up all

that I have, and, of course, compel me to go into bankruptcy, which I am sorrowfully preparing for. I will see you in Savannah in a few days.

Respectfully your ob't serv't,

P. M. NIGHTINGALE.

S. Olin Tallery, Esq're.

BRUNSWICK, *Sep. 8th*, 1872.

GENTLEMEN: I have just received your letter of the 30th ult., missent to Darien. If my Northern creditors are disposed to make an equitable arrangement under the circumstances, I will do my very best to accomplish it to their satisfaction, but if they are disposed to take advantage of the terrible depression and present depre-
289 ciation of all real property here, they must come in with the elder creditors and older liens and take their portion accordingly. I shall interfere in no way. At the same time, nothing will be more gratifying to me personally than to have a kind & friendly arrangement for Mr. Sanger's benefit or for those representing his interest.

Respectfully your ob't serv't,

P. M. NIGHTINGALE.

Messrs. Charles H. Smith & Sons.

Acknowledgment of Service.

MARCH, 1883.

Service of the within int'g's acknowledged and all other & further service & notice waived. Commission also waived; and we consent that the answers may be taken to int'g's & cross-int'g's by A. J. Cravatt & Frank H. Harris, and the answers sent to clerk of court at Savannah.

HENRY B. TOMPKINS,
W. A. WAY,
For Compl't.
LESTER & RAVENEL,
W. S. BASINGER,
Sol's for Def'ts.

Endorsements: In the U. S. circuit court for so. dist. of Ga., E div. In equity. Wm. H. M. Sanger *versus* Wm. Nightin-
290 gale *et als.* Interrogatories for Wm. Nightingale & John K. Nightingale. Henry B. Tompkins, W. A. Way, sol's for compl't.

Depositions of William Nightingale & John K. Nightingale.

STATE OF GEORGIA, *Glynn County:*

By virtue of an agreement between the counsel in the case of William H. M. Sanger, complainant, and William Nightingale, William Nightingale as executor, &c., &c., *et al.*, defendants, pending in the 5th circuit court of the United States for the southern dist. of Georgia, E. D., bill for relief, &c., the undersigned, acting as com-

missioners, have caused William Nightingale and John K. Nightingale, witnesses in said cause, to come before us, who, being duly sworn true answers to make to the annexed interrogatories, depose and answer as follows:

To the first interrogatory witnesses Wm. Nightingale and
291 J. K. Nightingale answer as follows: We knew him. We, William Nightingale and J. K. Nightingale, are brothers.

To the 2nd direct int. both witnesses answer: Yes; he was our father.

To the 3d int. both witnesses answer: John K. Nightingale was in Savannah in 1868. He planted Camber's Island for Phineas Nightingale in 1869. He planted Butler's Island in 1870 for Miss Butler. He planted Troup plantation for himself in 1871, '2, and '3. William Nightingale worked on the Macon & Brunswick railroad [in] 1868; was at Poughkeepsie, N. Y., in 1869. William Nightingale planted Camber's Island for John K. Nightingale in 1870. William Nightingale planted Broodfield plantation in 1871 for John K. Nightingale. Wm. Nightingale inspected lumber for Dodge & Co., in Brunswick, in 1872. William Nightingale planted Camber's Island on his own account in 1873. John K. Nightingale was married in 1871. William Nightingale was married in 1870.

To the 4th direct int. both witnesses answer: We know nothing about it.

292 To the 5th int. both witnesses answer: William Nightingale knows nothing. J. K. Nightingale knows nothing of any years save 1869, and only knows that such money as was sent to the plantation was used in cultivating the same—Camber's Island.

To the 6th int. both witnesses answer. A, letter number 1, was written by our sister "Bessie," and signed by P. M. Nightingale. We refers to Sanger and P. M. Nightingale. "B," letter No. 2, was written by our sister "Lou," and signed by P. M. Nightingale, our father. We refers to Sanger and our father, and we know nothing further of either letter—never saw them before. "C," letter No. 3, was written by our sister "Bessie," and signed by our father. The boys are witnesses answering. The place me-nt Camber's Island. The maps and other matters refer-ed to were drawn with the object of opening a watering place and hotel at "Dungeness" by a joint stock company in New York, and were carried on by our father for that purpose. "D," letter No. 4, was written by our sister "Lou," signed by our father. We know nothing of the balance-
293 sheet. "My son William" was witness William Nightingale, who went on to New York & saw complainant, but does not remember anything about carrying letter, or what crop he was to report upon. John K. Nightingale remembers nothing. "E," letter No. 5, was written by H. A. Kenrick, who was father's book-keeper. Balance-sheet was made out in the handwriting of said H. A. Kenrick, but we know nothing further about it. "F," letter No. 6, was written by our mother, "and Mr. Nightingale" was our father. "Johnnie" is J. K. Nightingale, one of the witnesses. The place refer-ed to is Camber's Island, and the rice thereon. "G," letter

No. 7, was written by our father. "H," letter No. 8, was written and signed by our father. "I," letter No. 9, was written by our sister "Bessie," and signed by our father. "Capt. Troup" was our brother-in-law. We know nothing [of] the business. John K. Nightingale says I know that I wrote Cuyler & Wiggins, of New York, for a vessel, and that they did all they could to procure one, but failed until some time after [the] vessel was needed.
294 We know nothing of the mortgage refer-ed [to] in letter. "J," letter No. 10, was written by our sister "Bessie" and signed by our father. We know nothing about [the] mortgage refer-ed to therein save this: John K. Nightingale says there was a paper claiming to be a mortgage which passed through his hands to be recorded, but remembers nothing further about it. We know nothing about the land titles, or who "Mr. Williams" was. "K, letter No. 11, was written by John K. Nightingale (one of the witnesses) and signed by him, and written to my father, P. M. Nightingale. The mortgage, I suppose, is the mortgage refer-ed to in letter 10 and given to me to have recorded. "Willie" is my brother, William Nightingale. "L," letter No. 12, was written by our sister "Bessie" and signed by our father. "M," letter No. 13, was written by John K. Nightingale, who answers that the mortgage therein refer-ed to is [the] same refer-ed to in letter- 10 & 11, above answered. "N," letter No. 14, was written by John R. Nightingale and signed by our
295 father. I only know of the letter and contents as the clerk who wrote. William Nightingale says, I know nothing of the letter; never saw it before. "O," letter No. 15, was written by our sister "Lou" and signed by our father. The plantation refer-ed to is Camber's Island, rented to J. K. Nightingale for three thousand bushels of rice. I, John K. Nightingale, *is* the son refer-ed to in letter 15, and had been requested by my father to plant for Mr. Sanger if he desired it. This is all I know about —. "P," letter No. 16, was written by our sister "Bessie" and signed by our father. John K. Nightingale was then living on Butler's Island and William Nightingale was then living on Camber's Island. Camber's Island was in a poor condition at that time, and was planted by William Nightingale for John K. Nightingale on money advanced by Devant, Waples & Co. to John K. Nightingale. We only know that our father, P. M. Nightingale, had failed to procure money to plant the place, and that was his reason for renting it.
296 "Q," letter 17, was written by our mother and signed by our father. We never saw the letter before, and neither of us was cognizant of the financial condition of our father, nor did we know the facts to be as stated in the letter. "R," letter No. 18, we neither of us know anything about—know nothing of the original now, nor did we ever know. "S," letter No. 19, our mother wrote, and our father signed it. We know nothing further about it. Neither of us know anything about the time when the existance of lien upon Camber's Island came to the knowledge of Mr. Sanger, or by whom he was notified. "T," letter No. 20, was written by William Nightingale and signed by our father. William Nightingale says he wrote the letter simply as a clerk, and knew nothing further about it.

John K. Nightingale says he knows nothing about it. Neither of us know exactly the time when P. M. Nightingale was in New York. "U," letter No. 21, was written by our sister "Bessie" and signed by our father. "V," letter No. 22, was written by our father. Neither of us know to whom it was written. We know nothing
297 further about the letter. "W," letter No. 23, was written by William Nightingale and signed by our father. We know nothing of the question of our own knowledge. "X," letter No. 24.—Letter 24 was written by our sister "Lou" and signed by our father.

To int. 7th both witnesses answer: We know nothing about the mortgage foreclosure nor anything of any agreement, tacit or otherwise, between our father and us thereto; none such ever existed. William Nightingale says: I bought in the island at sheriff sale, and gave my note for thirty thousand dollars. The reason for giving the note was it was not then settled how the title was to be made. The note was made payable to Jackson, Lawton & Basinger. The note we suppose to be still held by the payees. It has not been paid. The payment of the note has never been exacted. The sale was made under the order of Jackson, Lawton & Basinger, who received the note. I paid the sheriff his bill of cost; do not remember the amount of bill. Camber's Island
298 was, so far as I know, put up for sale in good faith, and I know of no designs to defraud Sanger in making the sale. We know nothing about the claim of Mrs. Molyneux, only that we heard our father say that she took "Dungeness" in part payment of the amount due the estate of Molyneux by him. There was an assignment made by Mr. Johnston, who was the agent of Mrs. Molyneux, as administrator upon the estate of E. Molyneux, to the children of P. M. Nightingale of the judgement obtained in Glynn county, and also of the mortgage then being foreclosed in the superior court of McIntosh county, but whether this was in writing we do not know. This is answered by William Nightingale only, as J. K. Nightingale says he knows nothing about it.

To the 8th int both witnesses answer: Camber's Island is now in possession of negroes; a small portion of it is in cultivation. It is in fine condition, and at the time of their answer is in charge of William C. Wylly, and now belongs to the children of P. M. Nightingale, our father.

299 To the 9th int. both witnesses answer: We are all indebted to the firm of W. Cumming & Co. Camber's Island is bound for the debt by a judgment held by Henry Hull as surviving copartner of Walace Cumming & Co. We have no copies.

To the 10th int. both witnesses answer: William Nightingale planted Camber's Island in 1870 for John K. Nightingale, and in 1873 William Nightingale planted it for the benefit of all the children of P. M. Nightingale. In 1871 Camber's Island was planted by William C. Wylly, and in 1872 it was planted by negroes. In 1870 the rents, three thousand bushels of rice, was received by P. M. Nightingale. In 1871 and 1872 there was nothing made. In 1873 William Nightingale received whatever profits there were.

To the 11th int. both witnesses answer: Don't know by whom

Jackson, Lawton & Basinger's fees were paid. Mr. Gignillait was not employed in the foreclosure suit at all. He was employed by William Nightingale in and about the purchase of Camber's Island.

To the 12th int. both witnesses answer: No such agree-
300 ment was ever made that we know of.

To the 13th int. both witnesses answer: We have not got the assignment spoken of; do not know when it was made or who was present when it was made We have no copy of it.

To the 14th int. both witnesses answer: Our father, on his return from Savannah, had a doubt roused in my mind as to whether he had "Dungeness" in fee or for life: do not know who raised the doubt; hence the making of the conveyance from his children to Mrs. Molyneux.

To the 15th int. both witnesses answer: We know nothing further that will benefit complainant or defendants.

JNO. K. NIGHTINGALE. [L. S.]
WILLIAM NIGHTINGALE. [L. S.]

Answered, sworn to, and subscribed before us, at Brunswick, Glynn county, Georgia, April 24th, 1883.

F. H. HARRIS, [L. S]
Commissioner.
A. J. CRAVATT, [L. S]
Commissioner.

301 *Endorsements on Envelope Containing Foregoing Depositions.*

Wm. H. M. Sanger, compl't, and Wm. Nightingale as ex'r., &c., &c., *et al.*, def'ts. In equity. In the 5th circuit court — United States for southern district of Georgia, E. D. Bill for relief, &c. —— ——, clerk of the circuit court of the United States, 5th circuit, southern district of Georgia, E. D., Savannah, Georgia. Marked across seal: A. J. Cravatt, commissioner. [L. S.], F. H. Harris, commissioner. [L. S.]

Received from the hands of F. H. Harris, one of the commissioners, interrogatories in the *in the* above-stated cause, to be forwarded by due course of mail, this 24th day of April, 1883, at Brunswick, Glynn county, Georgia.

F. M. DEXTER,
Acting Postmaster.

SAVANNAH, ——.

This package was received by due course of mail this 27 April, 1883.

L. McLAWS, *P. M.*

Opened by counsel.

LESTER & RAVENEL,
For Def'ts.
HENRY B. TOMPKINS,
Sol. for Compl't.

7 May, 1883.
15—228

302 *Petition for Allowance of Appeal.*

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Southern District of Georgia, E. D.

To the honorable the judge of said circuit court:

The petition of William H. M. Sanger respectfully shows that at the April term, 1883, of the circuit court of the southern district of Georgia, holden in Savannah, a certain suit in equity pending in said circuit court, in which your petitioner was complainant and William Nightingale, William Nightingale, as executor of Phineas M. Nightingale, deceased; Mrs. Ellen D. Nightingale, John K. Nightingale, Mrs. Mary K. Nightingale, Mrs. Mary R. Troup, Miss Louisa G. Nightingale, Mrs. Ellen K. Fuller, and Miss Elizabeth Nightingale were defendants, wherein complainant sought to foreclose a certain mortgage upon realty situated in said southern district of Georgia, came on for hearing before Hon. H. K. McCay upon pleadings and proofs.

303 Petitioner further shows that before proceeding with the hearing he amended his bill by adopting certain admissions contained in the answers of defendants, which showed that the mortgage given by Phineas M. Nightingale to Charles Spalding was barred by the statute of limitations of Georgia of 16 March, 1869. When it was foreclosed in 1872, this amendment was objected to by defendants, and the court stated that the amendment was unnecessary, as it only adopted what was already admitted and set forth in the answer. Under this ruling complainant proceeded to trial without reading the amendment as a part of the pleadings.

Your petitioner shows that at the hearing of said equity suit he introduced in evidence the following proofs:

1. The mortgage sought to be foreclosed, a certified copy of which was attached to the original bill and not denied by defendants as being correct in their answer or at the hearing.

2. Two of the notes that the said mortgage was given to secure, and the depositions of complainant to prove the loss of the other note, said deposition not being read, as the existance and subsequent loss of the note was admitted by solicitors for defendants at the hearing.

304 3. Deed of Margaret Greene to Phineas M. Nightingale, dated 9 November, 1853, and a certified copy of which was attached to the bill as an exhibit; the original not produced by defendants under notice.

4. Deed from Phineas M. Nightingale to Mrs. E. H. Molyneux, dated 21 July, 1870, a certified copy of which is attached as an exhibit to the bill, and admitted correct by solicitors for defendants.

5. Quit-claim deed from children of P. M. Nightingale to Mrs. E. H. Molyneux, dated — day of ——, 1871, certified copy of which is attached to the bill as Exhibit H and admitted correct by solicitors for defendants.

6. Deed of James R. Bennet, sheriff of McIntosh county, to Wil-

liam Nightingale, one of defendants, dated 7 January, 1873. This deed and the *fieri facias* accompanying it produced under notice upon defendants.

7. Note of William Nightingale for the purchase of Camber's Island at said sheriff's sale on 7 January, 1873. This note produced under notice.

8. Mortgage of 30 January, 1855, by Phineas M. Nightingale to Charles Spalding, with transfer thereon and endorsement of
305 satisfaction and under foreclosure of which the sheriff's deed of 7 January, 1873, was made. This mortgage produced under notice.

9. Depositions of E. A. McWhorter and F. M. Adams.

10. Certified copy of mortgage from Camden county, showing that P. M. Nightingale had mortgaged "Dungeness" as his own property to Legare, Colcock & Co., of Charleston, S. C., in 1856.

11. Certificate from clerk of Camden county superior court.

12. Certified copy of the will of P. M. Nightingale from court of ordinary of Glynn county, Georgia.

13. Two tax *fi. fa's* issued by tax collector of McIntosh county for taxes due on Camber's Island, produced under notice.

14. Deed of sheriff [of] McIntosh county, made on — day of ——, 187–,
to W. C. Wylly, conveying Camber's Island under tax sale.

15. Quit-claim deed by W. C. Wylly to William Nightingale, made 7 January, 1873, produced under notice.

16. Depositions of Alexander R. Lawton and William S. Basinger.

17. Complainant offered the depositions of two defendants, William & John K. Nightingale, and the letters of P. M. Night-
306 ingale thereto attached; but the court, upon motion of defendants' counsel, refused to allow them read; whereupon complainant excepted.

Defendants submitted no proofs, and the argument proceeded upon proofs of complainant alone, and after argument the court, by special order, reserved the decision, providing that it might be rendered in vacation, with leave to appeal as if rendered in term time, and that on the 11 day of July, 1883, the said judge made and caused to be filed a final decree in said cause in words and figures following, to wit:

"The above cause having been heard on the bill, answers, and testimony, at Savannah, during the April term, 1883, of the circuit court, and an order having been taken reserving a decision in the case until during vacation and after adjournment, and the *the* court having now fully considered the matter, it is decreed that the prayer of the complainant's bill be denied; that the sheriff's deed to William Nightingale, for the uses specified by the sheriff of McIntosh
307 county, be confirmed and the rights of complainant to foreclose be refused. It is further decreed that the defendants recover of complainant the sum of — dollars, costs.

"July 11, 1883.

"H. K. McCAY,
"*U. S. Judge.*"

Your petitioner further claims that the court committed error—

1. In refusing to allow the introduction in evidence by complainant of the depositions of the said two defendants, William Nightingale & John K. Nightingale.

2. In refusing to allow the introduction in evidence by the complainant of the letters written by Phineas M. Nightingale to complainant.

3. In making the aforesaid final decree against complainant's rights to foreclose his mortgage, as set forth and contended for in his said bill.

Wherefore your petitioner prays the allowance of an appeal from said decree of said court *of* the Su*perior* Court of the United States, amount involved being over $5,000.00.

This 14th day of July, 1883.

WILLIAM H. M. SANGER,
By HENRY B. TOMPKINS,
His Solicitor.

308 The appeal prayed in the foregoing petition is hereby allowed, with citation to issue on filing bond in the penal sum of five hundred dollars.

14 July, 1883.

HON. K. McCAY,
U. S. Judge.

Endorsements: Supreme Court of the United States. From 5th circuit court, southern dist. of Ga. William H. M. Sanger, complainant and appellant, and William Nightingale *et al.*, defendants. Petition for an allowance of appeal. Filed in clerk's office this 9th day of August, 1883. Henry B. Thompkins, sol. for appellant.

Bond on Appeal.

UNITED STATES OF AMERICA, *Southern District of Georgia:*

Know all men by these presents that we, Campbell Wallace and John J. McDonough, of the county of Fulton, in the State of Georgia, are held and firmly bound unto William Nightingale, Mrs.
309 Ellen P. Nightingale, John K. Nightingale, Mrs. Mary K. Nightingale, Mrs. Mary R. Troup, Miss Louisa G. Nightingale, Mrs. Ellen K. Fuller, & Miss Elizabeth Nightingale in the full and just sum of five hundred dollars, to be paid to the said above-named obligees, their certain attorney, administrators, executors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of July, A. D. 1883.

Whereas lately at a session of the circuit court of the United States for the southern district of Georgia, at Savannah, in a suit depending in said court between William H. M. Sanger, as complainant, and William Nightingale and others, as defendants, a final decree was rendered against the said complainant, and the said com-

plainant having obtained the allowance of an appeal and filed a copy thereof in the clerk's office of said court to reverse the said decree in the aforesaid suit, and a citation, directed to the said above-named obligees, William Nightingale and others, citing and
310 admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday in October next:

Now, the condition of the above obligation is such that if the said William H. M. Sanger shall prosecute said appeal to effect and answer all damages and costs if said appellant shall fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CAMPBELL WALLACE. [L. S.]
JNO. J. McDONOUGH. [L. S.]

Signed, sealed, and delivered in presence of—
A. M. GREENE.

The above bond examined and approved this the 24 day of July, 1883.

HON. K. McCAY,
U. S. Judge.

Endorsements: In Supreme Court of U. S. From 5th circuit court for the southern dist. of Geo., E. D. William H. M. Sanger, complainant and appellant, and William Nightingale *et al.*, appellees. Bond. Filed in clerk's office this 9th day of August, 1883. Marion Erwin, dep. cl'k.

311 *Citation.*

United States of America to William Nightingale, William Nightingale, executor of Phineas M. Nightingale, deceased; Mrs. Ellen D. Nightingale, John K. Nightingale, Mrs. Mary K. Nightingale, Mrs. Mary R. Troup, Miss Lousia G. Nightingale, Mrs. Ellen K. Fuller, & Miss Elizabeth Nightingale, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next, pursuant to an allowance of an appeal filed in the clerk's office of the circuit court of the United States for the 5th circuit and the southern district of Georgia, eastern division, wherein William H. M. Sanger is complainant and appellant, as in the said appeal mentioned, to show cause, if any there be, why decree rendered against the said appellant should
312 not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. H. K. McCay, judge of the United States court, this 24th day of July, 1883.

H. K. McCAY,
U. S. Judge.

Acknowledgement of Service.

GEORGIA, *Chatham County, City of Savannah:*

Service of the within citation is hereby acknowleged, copy and all other notice waived, this — day of July, 1883.

WM. S. BASINGER.
A. R. LAWTON,
Per H. C. CUNNINGHAM.
LESTER, & REVENEL.

Endorsements: In Supreme Court of United States. From 5th circuit court for the southern district of Georgia, E. D. William H. M. Sanger, complainant & appellant, and William Nightingale *et als.*, defendants. Citation. Filed in clerk's office this 9th day of August, 1883. Marion Erwin, deputy clerk.

313 *Clerk's Certificate.*

UNITED STATES OF AMERICA, } ss:
Eastern Division, Southern District of Georgia, }

I, H. H. King, clerk of the circuit court of the United States of America for the 5th circuit and southern district of Georgia, do hereby certify that I have compared the writings annexed to this certificate, and that they are true copies of their respective originals now on file and remaining of record in my office, being a full and complete exemplification of *of* the record and proceedings in the equity cause of William H. M. Sanger, complainant, against William Nightingale, individually and as executor of Phineas Miller Nightingale; Ellen D. Nightingale, and others, defendants, lately pending in this court and appealed by the complainant to the Supreme Court of the United States, as will appear from said record.

In testimony whereof I have hereto set my hand and duly affixed the seal of the said court, at the city of Savannah, in said division and district, this 25th day of September, A. D. 1883, and of the Independence of the United States the one hundred and eighth.

[Seal of U. S. Circuit Court, Georgia.]

H. H. KING, *Clerk.*

Endorsed on cover: S. Georgia C. C. U. S. No. 228. William H. M. Sanger, appellant, *vs.* William Nightingale, William Nightingale, executor of Phineas M. Nightingale, deceased; Mrs. Ellen D. Nightingale, John K. Nightingale, *et al.* Filed 4th February, 1884.

122-176

RECEIVED
APR 13 1887
JAMES R. McKENNEY,
CLERK.

STATEMENT OF CASE; ASSIGNMENT OF ERROR; AND BRIEF OF LAW POINTS.

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 228.

WILLIAM H. M. SANGER,
Appellant.

vs.

WILLIAM NIGHTINGALE, ET AL.
Appellees.

APPEAL FROM CIRCUIT COURT OF UNITED STATES FOR SOUTHERN DISTRICT OF GEORGIA.

HENRY B. TOMPKINS,
Of Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 228.

WILLIAM H. M. SANGER,

Appellant.

vs.

1. WILLIAM NIGHTINGALE individually and as Executor of the estate of his deceased father, Phineas M. Nightingale.
2. MRS. ELLEN D. NIGHTINGALE, wife of Wm. Nightingale.
3. JOHN K. NIGHTINGALE.
4. MRS. MARY K. NIGHTINGALE, widow of P. M. Nightingale.
5. MRS. MARY R. TROUP, formerly Mary R. Nightingale.
6. MISS LOUISA G. NIGHTINGALE.
7. MRS. ELLEN K. FULLER, formerly Ellen K. Nightingale.
8. MISS ELIZABETH NIGHTINGALE.

(All of which Defendants, except Mrs. Mary K. Nightingale and Mrs. Ellen D. Nightingale, are the children of said P. M. Nightingale, deceased, and of Mary K.)

Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

Statement of the Case.

The bill was filed on 8th April, 1880, decree made 11th July, 1883, and appeal taken and allowed on 14th July, 1883.

On the 6th December, 1869, the deceased, Phineas M. Nightingale, then living and planting rice in the Southern District of Georgia, borrowed from appellant, W. H. M. Sanger, then living in New York, the sum of ($30,000.00) thirty thousand dollars, for the payment of which said Nightingale made three notes, each for $10,000.00, falling due in one, two and three years after date, payable to said

Sanger, and secured the same by a mortgage on a certain rice plantation known as "Cambers Island," lying in the waters of the Altamaha river, in McIntosh county, Georgia, which lands contained about one thousand acres. The notes and mortgage were made in New York, and the mortgage delivered to said Nightingale by Sanger to carry to Georgia and have the same recorded. Nothing has ever been paid on either of the said notes or mortgage.

In April, 1873, said P. M. Nightingale died insolvent, leaving a will under which William Nightingale qualified as Executor in Glynn county (adjoining McIntosh county) on 4th February, 1874, and has not yet been discharged.

On 30th January, 1855, said P. M. Nightingale mortgaged "Cambers Island" to one Charles Spalding, of McIntosh county, for $150,000, to secure the payment of the purchase money of said Island and some negro slaves. In 1856 said Spalding assigned his mortgage to one Edward Molyneux; and in April, 1872, (said Molyneux having died), the Administrator of Molyneux—one Geo. H. Johnston, proceeded by Messrs. Jackson, Lawton and Basinger, attorneys and solicitors, of Savannah, Georgia, to foreclose the Spalding mortgage in the Superior Court of McIntosh county, Georgia, for an estimated balance of $51,250.00.

The existence of this Spalding mortgage was not made known to the appellant by said P. M. Nightingale, when the $30,000.00 was borrowed in December, 1869.

As early as the 7th February, 1870—sixty days after giving the mortgage to appellant—P. M. Nightingale wrote to appellant, "I have made up my mind to give up and turn my property over to my creditors." (Printed record, t. p. 104; side p. 275.)

On 17th June, 1870, said Nightingale wrote to appellant: "Mrs. Molyneux, who is my largest creditor, has consented to take my Dunginess place and release me in full, provided I can arrange with you and others satisfactorily to myself." (Printed record, t. p. 15; s. p. 40; also, t. p. 105; s. p. 279.) And on 26th July, 1870, said Nightingale wrote to appellant, "I am determined to close up my affairs finally, as soon as possible. With this view, therefore, I have partitioned out my property among my creditors, justly and equitably, to the best of my ability, and, I am happy to say, satisfactorily to all except yourself." (Printed record, t. p. 16; s. p. 42; also, t. p. 107; s. p. 284.) This settlement was effected with Mrs. Molyneux, the widow and sole legatee of the deceased E. Molyneux, who owned the Spalding mortgage, by deeding to her, on 1st July, 1870, 4,000 acres of land, being the southern portion of Cumberland Island, known as "Dunginess," for the expressed consideration of $25,000.00. (Printed record, t. p. 14.)

On February 7, 1870, Nightingale wrote to appellant: "Under these circumstances, I think it will be decidedly to your interest to come out and see for yourself the condition of the plantation, and confer with me and my other creditors." (Printed record, t. p. 104; s. p. 275.) And on 5th March, 1870, he wrote: "At the time I wished you to come out I thought it would probably be best for you to take the plantation and make this crop, with the assistance of my son, for your individual benefit, etc." (Printed record, t. p. 104; s. p. 277.)

In April, 1872, Sanger having refused to compromise his claim against Nightingale, the Spalding mortgage was sought to be fore-

closed in McIntosh Superior Court, and in January, 1873, Cambers Island was sold under this foreclosure suit of Charles Spalding for use, etc. *vs.* P. M. Nightingale. The *fiera facias* issued in name of Charles Spalding, for use of George H. Johnston, administrator of Edward Molyneux. The island was bought in by William Nightingale for the sum of $30,000.00, and the sheriff's deed was made to said William ~~and his mother, Mrs. Mary H.~~ Nightingale. Nothing was paid upon the bid, but a note, due one day after date, was given by William Nightingale for $30,000.00, payable to the order of the solicitors of Geo. H. Johnston, administrator, foreclosing the mortgage. This note is dated 7th January, 1873, and was afterwards surrendered by the solicitors to the said William Nightingale. All this occurred before the death of said P. M. Nightingale, in April, 1873. (Printed record, t. p. 30 and 31; s. p. 78, 79 and 80.)

Long after this foreclosure suit, and after the death of P. M. Nightingale, a deed turned up purporting to be a quit-claim of the assumed interests of the children of P. M. Nightingale in the Dunginess property to Mrs. Molyneux, sole legatee under the will of E. Molyneux. This deed was dated on the blank day of blank month, in 1871, and was not placed upon record until 27th September, 1879. (Printed record, t. p. 18; s. p. 47 and 48; also, s. p. 203.) This deed, for the first time, called attention to any possible defect in the full and fee simple title of P. M. Nightingale to "Dunginess," and the consideration, for the protection of Mrs. Molyneux in the title to Dunginess, that P. M. Nightingale had granted her in 1870, as he said, in his letter to Sanger, of July, 1870, in satisfaction and settlement of all he owed the estate of E. Molyneux, was the giving up by the administrator of said E. Molyneux' estate, a judgment for $61,250.00 against P. M. Nightingale and the transfer by the administrator of the Spalding mortgage to the children of P. M. Nightingale. This mortgage was not sought to be foreclosed until April, 1872, and then it was done by counsel for the Molyneux estate, and in name of Chas. Spalding for use of Johnston, administrator, vs. P. M. Nightingale.

On November 9, 1853, Margaret Green, then in the State of New York, made a warranty deed of Dunginess to P. M. Nightingale, who held, owned and controlled it from that time to the date of his deeding it on July 21, 1870, to Mrs. Molyneux, sole legatee, etc. (Printed record, t. p. 19, s. p. 50 and 51.)

In the year 1856 said P. M. Nightingale executed a mortgage upon Dunginess to Legare, Colcord & Co., of Charleston, S. C., for $40,000. This mortgage was foreclosed in U. S. Circuit Court at Savannah, and on October 2, 1871, an answer was filed admitting the legality of the mortgage and not setting up any want of fee simple title by P. M. Nightingale to Dunginess; and after his death, in 1873, his said son, William Nightingale, as executor, was made a party defendant, and neither for himself or his brothers and sisters, set up any claim against the fee simple title of his father to Dunginess. (Printed record, t. p. 59, s. p. 151). Very many years before this deed, in the year 1829, Dunginess had been willed to P. M. Nightingale by Mrs. Shaw, his aunt, who was the daughter of Gen'l Nathaniel Greene, and the half sister of the mother of said P. M. Nightingale. (Printed record, t. p. 6, s. p. 15 and 16. Also, t. p. 30, s. p. 77.)

["Dunginess," together with other lands, was given by the State

of Georgia immediately after the Revolution to Gen'l Greene. He removed to Georgia, died at the age of 44, and was buried at Savannah. His widow then went to live at Dunginess, where she married the private tutor of her children, one Phineas Miller, the grandfather of P. M. Nightingale.]

The bill of complaint alleges that the sale of the land in dispute under the foreclosure of the Spalding mortgage, for the use of Johnston, adm'r, etc., as shown in the *fi. fa.*; and the purchase thereof by William Nightingale, and the payment, not in cash, as the law requires, but with his note for $30,000, given to the solicitors of the Molyneux estate, which note was not intended to be paid, and was really re-delivered to said Nightingale long afterwards, all show a fraudulent combination and design on the part of Phineas M. Nightingale, and his family, to prevent appellant from realizing anything on his mortgage. That it was true, as written to appellant by P. M. Nightingale, in July, 1870, Mrs. Molyneux, sole legatee of her husband, had settled in full with said P. M. Nightingale by accepting the "Dunginess" property; and that the transfer of the judgment of $51,250, and the Spalding mortgage to the children of said Nightingale by the mysterious deed of 1871, was colorable and fraudulent. This deed of 1871, it is to be observed, was never traced to the possession of either Mrs. Molyneux, nor of Mr. Johnston, the administrator of Edward Molyneux; and there was no evidence produced that either Mrs. Molyneux or Mr. Johnston ever knew of the existence of such a deed. In 1879 it was found in the possession of a Mr. Purse, the then agent of the Molyneux estate in America, and was recorded only in September of that year in order that it might be used to defeat some suit brought by the wife of appellant, in an ejectment for Cambers Island. (Printed record, top page 77 and 78; side page 202 and 203). The title, interest or ownership of the children of P. M. Nightingale in "Dunginess" is not disclosed by this hidden and undated deed, but is developed by some testimony to be an assumed right in these children to that property after the death of their father. (Printed record, top page 88, side page 224; also t. p. 30, s. p. 77). No evidence whatever was attempted to be introduced substantiating such a claim; while on the part of appellant is the above referred to will of Mrs. Shaw, of 1829, and deed in fee simple of Mrs. Margaret Green to P. M. Nightingale as far back as 1853, his ownership and occupancy of Dunginess from 1829 to 1870, when he deeded it to Mrs. Molyneux, and, as he wrote, in full statement and discharge of the Spalding mortgage; and the record showing that said P. M. Nightingale had mortgaged this property to a firm in Charleston, S. C., in 1856.

The bill alleges that the Spalding mortgage was begun to be foreclosed in June, 1870. (Printed record t. p. 3, s. p. 7). And the answer of defendants set forth that the deed of day of 1871, was made after said Spalding mortgage was in process of foreclosure. (Printed record, t. p. 30, s. p. 78). This is an error, as it is shown by the depositions of one of counsel for appellees that the foreclosure was not begun until April, 1872. (Printed record, t. p. 80, s. p. 10). See also further as showing when and how this foreclosure suit was conducted, the testimony of Mr. Basinger in printed record, t. p. 78, s. p. 204, 205.

This information is at variance with that given by Mr. A. R. Law

ton, another member of the same law firm, in his letter to Charles Spalding on January 29, 1873. (Printed record, t. p. 17 and 18, s. p. 45 and 46). Gen. Lawton begins his letter by stating that he was "best acquainted with whatever has transpired in this office bearing on the business of that (the Molyneux) estate." The letter further discloses that "thus saving the bar of the statute of limitations passed in 1869, we proceeded to foreclose the mortgage, etc."

This, as has been seen, was an error, as the foreclosure suit was not begun until April, 1872. The letter then significantly adds: "By an arrangement afterwards made these bonds and mortgage were absolutely "satisfied" and turned over to Mr. Nightingale." Neither was the suit upon the bonds brought in Glynn Superior Court begun in time to save the bar of the limitation law of 1869. Answer of appellees, printed record, t. p. 29, s. p. 75.

Very clearly the arrangement referred to by Gen. Lawton must have been the deed from P. M. Nightingale to Mrs. Molyneux of Dunginess, (printed record, t. p. 14), and referred to by Mr. Nightingale in his letters to appellant. This arrangement, as is now contended by appellees, was the transfer of the Spalding mortgage to them, by the admr. of Molyneux, the foreclosure for their benefit of the same, the purchase by W. Nightingale, one of appellees, for $30,000, of Cambers Island, and the payment of that sum in a note to counsel of the estate, who had no interest in the mortgage and never intended to collect the note.

The whole case, for appellees, hinges upon the *non-dated* deed of 1871, from the children of P. M. Nightingale to Mrs. Molyneux, in which is recited the transfer of the Spalding mortgage to appellees. The bill alleges (printed record, t. p. 5, s. p. 13) that this quit claim deed "was never executed and delivered to said Johnston, admr. of the Molyneux estate, at his instance and request, nor any one for him, and that said Johnston was never in possession of said deed, etc., etc."

This is not denied in the answer of defendants, and appellees introduced no testimony to disprove this charge.

It is in proof by appellees counsel here that they represented only the Molyneux estate, (printed record, t. p. 85, s. p. 224, and t. p. 86, s. p. 227), in the foreclosure of the Spalding mortgage. And the theory by which the *quasi* representation of appellees in that foreclosure case is accounted for is that the foreclosure case was begun before the transfer of the mortgage, as recited in the undated deed of 1871. (See answer, printed record, t. p. 30, s. p. 78, and testimony of A. R. Lawton, t. p. 87, s. p. 232.)

Counsel for the plaintiffs—whoever the plaintiffs were—in the foreclosure of the Spalding mortgage, and who had special charge of the case in McIntosh county, testifies that he knew nothing of the deed of 1871, until six or seven years after he had conducted that case. (Printed record, t. p. 77, s. p. 203).

The *fieri facias* issued on this mortgage recites that it is in favor of "Charles Spalding, suing for use of George H. Johnston, admr., etc., of Edmund Molyneux." (Printed record, t. p. 43, s. p. 112). Yet the answer of appellees, and the testimony of their counsel seeks to show that as early as sometime in 1871 the Spalding mortgage was assigned to appellees. This was, at the least, some months before the filing of the suit for foreclosure in the State Court.

As to the transfer and assignment of this mortgage by the admr. of Molyneux to appellees, there is no evidence whatever of it except the recital in the deed of 1871. (Printed record, top page 18, s. p. 47.) The ordinary method is to write it on the mortgage, as was done with this very mortgage when it was transferred by Spalding to Molyneux. (Printed record, top page 50, s. p. 129.) Mr. Basinger testified as follows about the assignment: "I take it for granted Mr. Johnston knew of both deeds. I cannot say with my own knowledge that he did, but the transactions could hardly take place without his authority, and he must have made the assignment recited in the latter deed. The assignment itself is missing and cannot be found." (Printed record, t. p. 77, s. p. 202.)

General Lawton testifies: "I have been continuously the legal adviser of the legal representatives of the Molyneux property in Georgia, and of their agents here, from the year 1866 to the present time." (Printed record, t. p. 85, s. p. 223.)

Yet, for all this, he only speaks of the Spalding mortgage "having been assigned before foreclosure was completed." (Printed record, t. p. 87, s. p. 232.)

There is, in fact, not even a statement anywhere that such assignment was in writing.

It is denied by the answer of appellees that the conveyance of the Dunginess property to Mrs. Molyneux was in full satisfaction of the indebtedness of P. M. Nightingale to Edward Molyneux; but it is not shown why, or by what authority, the Spalding mortgage, and the judgment in Glynn county, belonging to Mrs. Molyneux as sole legatee, was released to appellees by the admr. of Edmund Molyneux, without the knowledge or consent, so far as the proofs show, of Mrs. Molyneux herself. Nor does it appear that either Mrs. M. or Mr. Johnston are not living, and yet no effort was made to obtain their evidence in the case by appellees.

The Court below refused to admit and consider the various letters of P. M. Nightingale to appellant, or the depositions in writing of the appellees, William and John K Nightingale, the only two male members of the family of P. M. Nightingale. And this, although it was manifest, from the suppressed testimony, that all the appellees were living together with P. M. Nightingale in relations of the closest and most affectionate intimacy. His sons were working for him and with him, and they, and the female members of his family, were writing, if not composing, the letters sent to appellant. (Printed record, t. p. 93 to 113, s. p. 247 to 300.)

The cause came on for argument on the 9th of June, 1883, before the late Hon. H. K. McCay, at Savannah, and on the 11th of July, 1883, the Judge rendered the decree denying the right of appellant to have his mortgage foreclosed, and holding that the sheriff's deed conveying Cambers Island to William Nightingale under the foreclosure of the Spalding mortgage be valid and confirmed, and refusing to foreclose the mortgage of appellant.

A more extended decision was also rendered in the cause, and is to be found in 4 Woods, C. C. Reports, page 483.

The Court is asked to look at the whole record, including the testimony of the letters and the two sons of P. M. Nightingale which was excluded from his own consideration by the Judge below. These letters are proven by the depositions of William and John K. Night-

ingale, to have been written by the various members of the family of P. M. Nightingale, and signed by him. They show that all the appellees well knew of the condition of their father and his indebtedness to appellant. These letters and depositions are on top pages 98 to 113, of printed record.

These letters disclose that in April, 1869, the accounts were closed up between P. M. Nightingale and appellant by the mortgage on the 6th of December, 1869—money was being advanced by appellant to be expended on the rice plantation. They also show that the planting was being run by father and sons. "The boys manage the place very well indeed, better probably than I could do myself." In letter No. 4, top page 99, of printed record, is written: "I enclose you to-day the balance sheet for 1865. My son William will hand you this letter and give you a full account of the crop, which I am happy to say is satisfactory." In the depositions of William and John K. Nightingale on top page 110, both witnesses answering, say: "Letter No. 4 was written by our sister Lou, and signed by our father. We know nothing of the balance sheet. My son William was witness, (William Nightingale,) who went on to New York and saw complainant, but does not remember anything about carrying letter, or what crop he was to report upon."

II.—ERRORS ASSIGNED.

1. The Court erred in finding and decreeing the foreclosure of the Spalding mortgage in the Superior Court of McIntosh county to be valid and binding, as against the mortgage claim of appellant under his mortgage of the 6th of December, 1869.

2. The Court below erred in not finding and decreeing the mortgage of appellant valid and binding on Cambers Island, and in not decreeing its foreclosure against said property, notwithstanding the foreclosure of the Spalding mortgage in McIntosh Superior Court in 1873.

3. The Court below erred in finding and decreeing the deed of the sheriff of McIntosh county, given to appellee, William Nightingale, on his purchase of Cambers Island under the foreclosure of the Spalding mortgage, to be valid and binding to convey said Cambers Island, or any part of it, to said purchaser.

4. The Court below erred in not finding the foreclosure of said Spalding mortgage in favor of the children of said P. M. Nightingale to be fraudulent and void as against the mortgage and rights of appellant.

5. The Court below erred in not finding and decreeing the assignment, by George H. Johnston, Administrator, etc., of the Spalding mortgage to the children of P. M. Nightingale, and mentioned in the deed of 1871, invalid and void for want:

First. Of any authority in the said Administrator to make the assignment.

Second. Because there was no consideration moving from the said children of P. M. Nightingale to the estate of E. Molyneux represented by said Johnston.

Third. Because assignments of mortgages can only be made in writing, and there was no evidence of any written assignment made by said Administrator to said children of said P. M. Nightingale.

Fourth. Because there was no evidence that Mrs. E. H. Molyneux, widow and sole legatee of said E. Molyneux, had ever sanctioned or acknowledged the assignment of said Spalding mortgage to the said children of said P. M. Nightingale.

6. The Court below erred in not finding and decreeing that the foreclosure of the Spalding mortgage in McIntosh Superior Court in 1873, was null and void, as against the mortgage of appellant, because said Spalding mortgage was barred by the statute of limitations of the State of Georgia, enacted on the 16th of March, 1869, on and after the 1st of January, 1870, and it was not sought to be foreclosed until April 1872.

7. The Court below erred in excluding the letters of P. M. Nightingale, offered in evidence at the hearing by counsel for appellant.

8. The Court below erred in excluding the depositions of the two appellees, William and John K. Nightingale, offered in evidence at the hearing by counsel for appellant.

9. The Court below erred in finding and decreeing, "that the prayer of complainants (appellants) bill be denied; that the sheriff's deed to William Nightingale, for the uses specified by the sheriff of McIntosh county, be confirmed and the rights of complainant (appellant) to foreclose be refused."

III.—ARGUMENT AND BRIEF OF LAW POINTS.

FIRST.

ON THE QUESTION OF FRAUD.

(*a*) If it were true, as contended for by appellees, that P. M. Nightingale did inform Sanger of the Spalding mortgage; did not sell Dunginess to Mrs. Molyneux, except in part payment of her claim, then why was it necessary for Johnston, the adm'r, to transfer the Spalding mortgage to children of P. M. Nightingale; and why was it necessary for these children, the appellees, to make deed of 1871 to Mrs. Molyneux, who was in England, and knew nothing of it, and which deed was never recorded until 1879?

(*b*) Why was it necessary that the Spalding mortgage should be foreclosed in 1872 by the counsel of the Molyneux estate, in the name of Spalding, for use, etc., of Geo. H. Johnston, adm'r, etc., (printed record, t. p. 43, s. p. 112), and that the execution should so recite, when in fact the mortgage became the property of William Nightingale and others, the appellees, in 1871?

(*c*) Why was it necessary that counsel for plaintiffs in this Spalding mortgage foreclosure, who are distinct in saying that they acted solely for the Molyneux estate, (printed record, t. p. 85, s. p. 224; also, t. p. 86, s. p. 227), should be so deceived by somebody as to consent to conduct a suit in which their client had no possible interest?

(*d*) Why was it that if the Spalding mortgage and notes were given to counsel, by the agent or adm'r of the Molyneux estate, to sue before January 1, 1870, to save the bar of the statute of March 16, 1869. (Printed record, t. p. 17 and 18, s. p. 46), that suit should have been delayed until long after the bar of statute had attached? And how is that statement to be reconciled with the other undoubted facts of the case, that the Spalding notes and mortgage were not placed in the hands of Messrs. Jackson, Lawton & Basinger until October, 1870, nine months after they were barred? (Printed record, t. p. 77, s. p. 201, where Mr. Basinger states: "The mortgage was placed in my hands for foreclosure, * * * not long after the date of the former of the above mentioned deeds, (of July 21, 1870) say sometime in October, 1870." Also, t. p. 87, s. p. 230). And, "The petition was to have been filed and rule *ni si* taken out at the November Term of McIntosh Court, in 1870." (Printed record, t. p. 78; s. p. 204.

(*e*) Why was it that, if counsel had the Spalding notes and mortgage in their hands in time to bring suit before January 1, 1870, no suits were brought until *after* Sanger had refused to compromise with P. M. Nightingale and take one half of Cambers Island? (Printed record, t. p. 108, s. p. 278, letter of P. M. Nightingale to Sanger of date June 17, 1870; also t. p. 106, s. p. 282, letter of same to same of date July 4, 1870).

At the very time P. M. Nightingale was writing to Sanger, urging

a compromise, and holding out Mrs. Molyneux as his largest creditor, etc., (printed record, t. p. 105, s. p. 279), he knew that the statute of 1869 had forever barred the claim of Molyneux.

(*f*) Why was it, the whole Molyneux debt being barred on January 1, 1870, that P. M. Nightingale should, as late as July 21, 1870, have executed a deed for Dunginess to Mrs. Molyneux *except* as a compromise and full payment, as he stated to be the fact to Sanger in a letter of July 26, 1870? (Printed record, t. p. 107, s. p. 284.)

(*g*). Why was it that P. M. Nightingale, except to wrong and injure Sanger, permitted the Spalding mortgage to proceed to a foreclosure after it was barred by the statute of 16th March, 1869, and holding, before he gave the mortgage to Sanger, that the Spalding mortgage was void and valueless? (Printed record, t. p. 107; s. p. 284, and t. p. 108; s. p. 286. Letters of P. M. Nightingale to Sanger, of date 26th July, 1870, and 7th September, 1870.)

If there was a settlement with Mrs. Molyneux in July, 1870, as Nightingale says in his letter, then there could have been no lawful opening of that settlement in October, 1870, and suit instituted in 1872, to the injury of Sanger. (Printed record, t. p. 75; s. p. 195, where Mr. Basinger says, in effect, that he was requested to proceed at once to foreclose the Spalding mortgage after there had been an adjustment of the amount due on it. He afterwards, (t. p. 77, s. p. 201,) fixes the time when he took charge of the mortgage, as being in October, 1870.)

This is a question of bad faith on the part of P. M. Nightingale; and it conclusively appears that he considered this Spalding mortgage, first, as valueless when negotiating with Sanger, in December, 1869, before he gave the Sanger mortgage; and, second, as compromised, in July, 1870, when he gave the deed to Dunginess to Mrs. Molyneux.

Gen. Lawton says that Mr. Geo. H. Johnston was, for a short time, administrator in Georgia; (printed record, t. p. 84; s. p. 223,) that he was the brother of Mrs. Molyneux, and an aged man; that he did not administer until a number of years after Mr. Molyneux' death, and then only to protect the estate formally from certain suits in the U. S. Courts; that the active management of the estate was continued in the agent, and Mr. Johnston seldom acted, except when the authority of a legal administrator was necessary. (Printed record, t. p. 87; s. p. 230, 231). Then, Mr. Molyneux had been dead a number of years, and the Spalding mortgage was not foreclosed; Mr. Johnston was old and indifferent, and it surely was easy enough, after Sanger would not compromise, for Mr. Nightingale to get Mr. Johnston or the agent to allow, or not to object to, the Spalding mortgage foreclosed, in the interest of the children of Mr. Nightingale. This view is strengthened by the additional facts that the Spalding mortgage was, when the adjustment was had in October, 1870, barred by the statute, and that sometime in 1871—if, indeed, it were not even later than that—the children of P M. Nightingale, the appellees, executed a deed to Mrs. Molyneux, who was in England, upon condition of the transfer of a judgment against their insolvent father, and the stated, but never disclosed, transfer and assignment of the Spalding mortgage to them by Mr. Johnston, the administrator.

It has been said before, and may be contended again, that Mrs. Molyneux had a right to *give* what she pleased to the appellees, chil-

dren of the old friend of herself and her husband. Further, that Johnston, the administrator, had the right to release the mortgage of his testator as against Sanger, who only had a junior security to the Spalding mortgage.

But did either of these things occur?

Mrs. Molyneux, who was the widow and sole legatee, certainly did not, so far as there is any evidence to show, release or give anything to the appellees. P. M. Nightingale, in his before quoted letters of the 17th of June and 26th of July, 1870, says that "she had consented to take my Dunginess place and release me in full, provided I can arrange with you (Sanger) satisfactorily to myself." (Printed record, top page 15, side page 40.) Again, with this view, says Mr. Nightingale—that is, the determination to close up his affairs financially—"I have partitioned out my property among my creditors justly and equitably, to the best of my ability, and, I am happy to say, satisfactorily to all, except yourself." (Printed record, top page 16, side page 42.) These letters were in exhibits to the bill, and not denied as genuine and true by the answer of appellants.

To whom, then, was Cambers Island to go? One-half, but no more, to Sanger; and if he would not take that, then he should have none of it.

If Mrs. Molyneux did settle fully with Mr. Nightingale, and he, the ancestor, says she did, and did not sell or transfer the Spalding mortgage to him—and of this there is not even a pretense—then could the administrator of an estate of which Mrs. Molyneux, under the will, was sole legatee, transfer title in a barred mortgage, the only title to which, if there were any, was in Mrs. Molyneux? It is to be remembered that Gen'l Lawton says—(Printed record, t. p. 87, s. p. 230)—"Mr. Johnston administered only to protect the estate formally in certain suits in the United States Courts." There was a will leaving almost everything to Mrs. Molyneux, which the named executor could not execute, but titles were fixed by the will. (Printed record, t. p. 29, s. p. 73. Also, t. p. 84, 85, s. p. 223.) The title to the Spalding mortgage being in Mrs. Molyneux, it could not be transferred or assigned, even in writing, by any other person, even for a valuable consideration moving to her.

(*h*) Why was it that after writing appellant in July, 1870, he had settled with Mrs. Molyneux, P. M. Nightingale failed to inform Sanger of the adjustment he made with the administrator of Molyneux in October, 1870. Failed to inform him that the Spalding mortgage which was barred and which he had induced Sanger to believe was worthless in December, 1869, was in the hands of eminent counsel to be foreclosed, as they thought, for the Molyneux estate, but as Nightingale knew, for the benefit of his own family? (Printed record, t. p. 15 and 16, s. p. 40 to 43. Also, t. p. 108 and 109, where it is shown Nightingale wrote letters to Sanger in September, October and December, 1870, and to Smith & Sons about the Sanger claim as late as the 8th of September, 1872.) In the letter of the 14th of October, 1870, it is distinctly stated that his creditors had accepted his proposition for settlement, except Sanger.

Yet, almost at this very date Nightingale was concerting with the representative of the Molyneux estate to acknowledge a barred debt, and to fix upon the amount for which a foreclosure should be made on the land, at least half of which he had lately offered to Sanger in discharge of his mortgage. (Printed record, t. p. 75, s. p. 195. Also, t. p. 77, s. p. 201, 202. Also, t. p. 87, s. p. 230.) And the whole of which he had been willing for him to take possession of in February, 1870. (Printed record, t. p. 104, s. p. 277.)

(*i*) Why was it that, having Sanger under the impression the Spalding mortgage had been settled by giving Dunginess to Mrs. Molyneux, P. M. Nightingale, in April 1872, acknowledged service in the foreclosure proceedings in McIntosh Superior Court upon a barred debt, which had been assigned to and was being prosecuted for his own family, and neither employed counsel to contest the suit, or gave any information of it to appellant? (Printed record, t. p. 80, s. p. 209.)

It is nowhere shown that either Mrs. Molyneux or Mr. Johnston, the administrator, actually knew of the adjustment made with P. M. Nightingale in October, 1870, and of the foreclosure suit begun in 1872. The fair inference is that it was a scheme of P. M. Nightingale to save Cambers Island to his family, innocently acquiesced in by the agent of Mrs. Molyneux and counsel of the Molyneux estate, and graciously carried out by the uncontested foreclosure in the State Court. (Printed record, t. p. 86 to 88, s. p. 229 to 233.)

(*j*) Why was it that P. M. Nightingale, in January, 1873, before his death in April of that year, suffered the mortgaged property to sell under the foreclosure proceeding for his family, and to be bid in for $30,000 by his son and paid for in a note given to counsel, etc., and yet never notified Sanger of the suit or the sale; after leaving him under the impression, in 1870, that he had settled with all his creditors, and that he had the power to give him (Sanger) one-half of Cambers Island for his (Sangers) demand against the whole of it? (Printed record, (answer of appellees) t. p. 30, s. p. 78; also t. p. 105, s. p. 278, 279, letter of June 17, 1870.) It is significant as showing actual knowledge on the part of appellee, William Nightingale, of the satisfactory partitioning of his father's property among his creditors—except as to Sanger—that both he and his brother, John K., swear that William wrote the letter of July 21, 1870, (printed record, t. p. 107. See printed record, t. p. 111, s. p. 296.) So, also, William wrote the letter on t. p. 108, s. p. 288, of printed record, of date

December 26, 1870, wherein Mr. Nightingale speaks of the suit (the one in Brunswick, evidently, in name of Johnston, adm'r. on the bonds,) then lately brought for $60,000. (Printed record, t. p. 112, s. p. 297.)

(*k*) Why was it, if the assignment of the Spalding mortgage to appellees was honest and legal, and the foreclosure in good faith, that the bid of $30,000 made by appellee, William Nightingale, for himself and co-appellees, as he now contends, was not credited on the mortgage that belonged to appellees, and the sheriff's deed given to those really interested in the property; instead of giving a note to counsel for a person who had long ceased to have any title to or interest in the mortgage; and which note was never meant to be collected? (Printed record, t. p. 31, s. p. 79 and 80; also, t. p. 112, s. p. 297.)

(*l*) Why was it, if it was true, as appellee, William Nightingale, sets up in his answer, (printed record, t. p. 31,) that he bought the land, at the foreclosure sale, as trustee for the other appellees, he afterwards proceeded to make an absolute sale of the island to W. Cummings & Co., as his own property, and to secure his own debt? (Printed record, t. p. 21, s. p. 53.)

The reason given for taking the deed in his own name, and giving a note—never meant to be paid—is no reason at all. For if the transaction was honest and fair, why not have credited the mortgage and the *fi. fa.* with the $30,000, and taken the deed in the name of W. Nightingale as trustee, etc.?

Fraud, the law of this State says, is subtle, and while it may not be presumed, yet slight circumstances can carry conviction of its existence. (Code of Ga., §2751.)

If William Nightingale, the eldest brother, and who was acting for all the family as trustee, *knew* that his father had settled with Mrs. Molyneux by conveying Dunginess, and *knew* that the Spalding mortgage was being foreclosed to save the island to the family as against the mortgage of appellant; and *knew* that there had been no legal written assignment of said Spalding mortgage, but that the shadowy and unacknowledged claim of appellants to *some* estate in Dunginess, was but the pretext for the making of a deed to Mrs. Molyneux, who did not desire or demand, but only acquiesced in it; then all the appellees are bound by the knowledge and acts of their brother and trustee. However commendable it may have been considered from the standpoint of P. M. Nightingale and his children, that something should be saved from the wreck of his fortune, and at the expense of a stranger and a money lender, the law will scrutinize anything connected with the case, and if there be fraud, will give to the creditor his own.

CASE MADE FOR APPELLEES.

The most favorable case for the appellees made possible by the pleadings and proofs, or the contention of counsel, is this:

Messrs. Jackson, Lawton and Basinger, were the Solicitors for the estate of E. Molyneux at Savannah. In the fall of 1870, about October, the agent of that estate turned over to them certain bonds secured by a mortgage on Cambers Island. After consultation with

the mortgagor, P. M. Nightingale, he consented to the sum due being fixed at $51,250. For this amount suit was brought, at common law in Glynn county, on the bonds, and judgment obtained. Then waiting until sometime in 1871, a deed was drawn in the office of the Solicitors at Savannah, (printed record, top page 77, side page 201), and signed by the appellees in Glynn county, conveying Dunginess to Mrs. Molyneux for the consideration of the transfer to them of the judgment of $51,250 and the Spalding mortgage. This deed recites a transfer of the Spalding mortgage to appellees by the administrator, but no proof was introduced showing that any one ever drew such assignment or ever remembered to have seen or heard of it. The appellees, William and John K. Nightingale, both swear, "We have not got the assignment spoken of; do not know when it was made or who was present when it was made. We have no copy of it." (Printed record, t. p. 113, s. p. 300; also, t. p. 112, s. p. 298). They say also, "but whether this (the assignment) was in writing we do not know." Nor was it known to, seen by or drawn by the very able and careful counsel who had charge of the Molyneux business. It was easy enough for appellees to sign a deed conveying a right they never had to obtain an assignment of a mortgage which assignment no one ever saw or heard of: but it was quite a different matter to obtain from Mr. Johnston, or Mrs. Molyneux a written assignment of a mortgage that was barred by the statute of limitation, and that, according to the only direct evidence on the point—the letters of P. M. Nightingale—was fully settled as far back as July, 1870. Long afterwards this deed of 1871, was found unrecorded, in the keeping of another agent of the Molyneux estate.

In April, 1872, the solicitors of the Molyneux estate, whether acting under instructions of the agent of the estate or the administrator, is not made plain, begin a foreclosure suit in McIntosh county, upon which P. M. Nightingale accepts service, and to which he interposes no defense, and the result of which was to turn Cambers Island over to his children. It is contended that Mrs. Molyneux owning the Spalding mortgage, and it being a prior lien to the Sanger mortgage upon the Cambers Island, she had a perfect right to give it to the appellees and although it was then, in 1871, barred by statute, that appellees had the right, through the counsel of Molyneux estate, to file a suit and foreclose the mortgage against their father and buy buy in the island as has been shown they did.

This is offered as a defense against the foreclosure suit of the Sanger mortgage; about the validity of which no question is raised. In order to substantiate this defense, and preclude appellant from foreclosing his mortgage, it is respectfully submitted that appellees must prove their case, by showing to the Court with probable and satisfactory proofs:

First. That the statements in the letters of P. M. Nightingale, concerning the settlement of this claim of the Spalding mortgage with Mrs. Molyneux, are not true.

Second. That there was no collusion and fraud, in law, between P. M. Nightingale and the appellees, or either of them acting for all, concerning the foreclosure of the Spalding mortgage.

Third. That there was a written transfer and assignment of the Spalding mortgage, by the person having the right to assign, and

based upon a good consideration. This involves proof (*a*) of the right of the administrator of Molyneux to assign; and (*b*) the validity of the assumed title of appellees in Dunginess, the relinquishment of which was the consideration for the assignment.

Fourth. That the foreclosure suit of the Spalding mortgage was begun and conducted in the name and for use of those having the title and right to such mortgage.

Fifth. That the Spalding mortgage was not barred by the statute of limitation of 1869, when the foreclosure suit was begun in April, 1872.

LETTERS OF P. M. NIGHTINGALE.—(1).

They were proven genuine by depositions of the two appellees, William and John K. Nightingale, to have been written by the various members of the family, including nearly, if not quite, every one of the appellees; and these letters were on a subject vital, and necessarily known, to each one of the family. They were just such letters as Sanger must have been largely governed by, and their answers from Sanger, which could not be produced under notice, but which no doubt were fully discussed by the Nightingale family, must have been conclusive in carrying knowledge to the appellees of the business affairs existing between P. M. Nightingale and appellant.

If P. M. Nightingale *meant* to settle the claim of Mrs. Molyneux by conveying Dunginess in July, 1870, then he could not voluntarily unsettle it in October, 1870; verbally agree to being indebted on the Spalding mortgage $51,250, and consent to its foreclosure in favor of his own family and against the claim of Sanger or his mortgage. Granting that Mrs. Molyneux did not consider the deed to Dunginess a full settlement of the Spalding mortgage, and that she was willing to give to the appellees, children of P. M. Nightingale, whatever rights she still had in the mortgage; yet if Nightingale considered and so informed Sanger that he had settled the Spalding mortgage, he was bound in equity to protect Sanger by resisting its foreclosure in favor of his own children. That he could have successfully resisted this foreclosure, by setting up the statute of 1869, no one has questioned.

FRAUD.—(2).

On this point the whole record is to be looked to, and that, in opinion of counsel for appellant, conclusively demonstrates that there was, at the least, legal fraud.

Code of Ga. §§ 3173, 3185, 3177, 3178.

Also, § 2751.

ASSIGNMENT OF SPALDING MORTGAGE.—(3).

If there was no written or legal assignment of the mortgage, then the whole case of appellees fails.

So far from proving that there was the proofs adduced by appellant, from the solicitors of appellees, and from the two male appellees shows that there never was any assignment. The proofs are: (Printed record, t. p. 77, s. p. 202.)

(*a*) Mr. Basinger, speaking of the administrator, says: "He must have made the assignment recited in the latter deed. The

assignment itself cannot be found. Whether either of the deeds were ever in his actual possession, as distinguished from that of ourselves as attorneys of the estate, I cannot say, but I should think not, as neither of them were made to him, and, in the then condition of affairs of the estate, we were the proper custodians of both." If proper for them to draw the deeds and keep them, what more proper than that they should draw the assignment, and keep it, of a mortgage that was in their possession from October, 1870, to long after the foreclosure in 1873?

(*b*) Gen. Lawton (printed record, t. p. 87, s. p. 229) only speaks of the transfer and assignment, but is less definite, even, than Mr. Basinger.

(*c*) William and John K. Nightingale, (printed record, t. p. 112, s. p. 298), state, "there was an assignment made by Mr. Johnston, *who was the agent of Mrs. Molyneux*, as admr. of the estate of E. Molyneux, to the children of P. M. Nightingale, of the judgment obtained in Glynn county, and also of the mortgage then being foreclosed in the Superior Court of McIntosh county, but whether this was in writing we do not know." (Again, printed record, t. p. 113, s. p. 300): We have not got the assignment spoken of; we do not know when it was made or who was present when it was made. We have no copy of it." According to these appellees, the assignment was made by Mr. Johnston as agent; but when, where, how, or in whose presence they are utterly ignorant. If by an agent, then there should have been a written power of attorney executed in England by Mrs. Molyneux. If assignment was of the mortgage "then being foreclosed," it could not have been made in 1871, as the undated deed recites, but not after April, 1872.

(*d*) The appellees knew of the existence of the Sanger mortgage when they obtained the assignment of the Spalding mortgage—granting there was a formal transfer of that mortgage to them—and they were bound to know that, in point of fact, the bonds secured by the Spalding mortgage were long passed due; and to know that, in point of law, the bonds and mortgage were barred by the act of 1869.

WANT OF TITLE IN PARTIES TO SPALDING FORECLOSURE SUIT—(4.)

Appellees, in their answer to the bill, allege:

1. That the assignment of the Spalding mortgage was made to them by the said Geo H. Johnston, administrator of E. Molyneux. (Printed record, t. p. 30, s. p. 78.)

2. That the sale, at which William Nightingale bought Cambers Island, took place for their benefit as creditors of P. M. Nightingale, their father. (Printed record, t. p. 31, s. p. 79.)

These allegations they were bound to prove, and this they have signally failed to do.

There is no evidence of a written transfer of the mortgage by Johnston, administrator, to appellees. The only writing, other than the recital in the pretended and undated deed of 1871, on top page

18, side page 47 and 48, printed record, is found in the deposition of Mr. Basinger, on top page 77, side page 202, of printed record. Speaking of the knowledge of Mr. Johnston, administrator, concerning the two deeds, of Nightingale to Mrs. Molyneux, and of his children to Mrs. Molyneux of 1871, he says of Mr. Johnston: "He must have made the assignment recited in the latter deed. The assignment itself is missing and cannot be found."

No one swears, however, that they ever saw or heard of the contents of this assignment of the Spalding mortgage. The appellees, in their answer, state that Johnston, the administrator, did assign the Spalding mortgage to them, "then in process of foreclosure." (Printed record, t. p. 30, s. p. 78.) But this, obviously, is not true, as the foreclosure suit was not begun until April, 1872. (Printed record, t. p. 80, s. p. 209,) while the deed in which the assignment is recited bears date of 1871. Also, the mortgage *fi. fa.* recites that it is on judgment of foreclosure at suit of Chas. Spalding, for use, George H. Johnston, administrator, etc., vs. P. M. Nightingale. (Printed record, t. p. 43, s. p. 112.)

The right of appellees to have had the mortgage foreclosed for them by Johnston, administrator, depended entirely on two considerations: First, The legal right of Johnston to control and foreclose the mortgage himself. Second, The valid written transfer of the mortgage by Johnston to the appellees.

3. The transfer and assignment of the Spalding mortgage by the mortgagee, on the 28th of March, 1856, to Edmund Molyneux, left no title of any kind in Spalding, (printed record, t. p. 50, s. p. 129,) and the use of Spalding's name to foreclose was illegal and improper.

The foreclosure was statutory and not by bill, and in Georgia such suit must be in name of party interested.

Code of Ga., §3257.

4. It is conceded that at the death of Mr. Molyneux, some years before 1870, the title to this mortgage was vested in his widow by his will. (Printed record, t. p. 29, s. p. 75. Also, t. p. 85, s. p. 224, 225 and passim.)

The will operated as a valid transfer and assignment to Mrs. Molyneux, and the right to foreclose was vested solely in her.

And the right could only be exercised by the person "entitled to foreclosure," that is the real owner. Code of Ga., §3962.

39 Ga., 26; Flagg vs. Johnson.

5. If, however, the administrator *could* legally assign the mortgage to the appellees in 1871, before the foreclosure suit was begun, and *did* so assign said mortgage in writing, and these two assumptions are the sole possible tenable grounds upon which the decree below could have been placed, then the foreclosure suit should not have been in the name of Spalding for use of Johnston, administrator, by counsel who were deceived into believing that they were acting solely for the Molyneux estate, when, in fact, that estate was without any right or title in the premises. The foreclosure should have been in the name of the party holding the legal interest.

Code of Ga., § 3257.

35 Ga., 119. Calhoun vs. Tullass.

27 Ga., 62. Brooking vs. Dearmond.

6. Assignment of bonds, mortgages, etc., must be in writing. Code of Ga., § 2776.

STATUTE OF LIMITATIONS.—(5).

The Spalding mortgage was given to secure a debt arising before 1st June, 1865, to-wit: in 1855. (Printed record, t. p. 46, s. p. 119).

The act of 16th March, 1869. (Pamphlet acts Georgia Legislature p. 133, § 3, is as follows: "That all actions on bonds *or other instruments under seal*, and all suits for the enforcement of rights accruing to individuals, or corporations, under statutes or acts of incorporation, or in any way by operation of law which accrued prior to 1st June, 1865, not now barred, shall be brought by 1st January, 1870, or the right of the party, plaintiff or claimant, *and all right of action for its enforcement* shall be forever barred."

It is distinctly ruled in Georgia that a *purchaser* of mortgaged premises, buying *prior* to the foreclosure suit is begun, can set up the statute of limitations. In 54 Georgia Repts. p. 462, Williams vs. Terrill, the court holds: "One who purchases mortgaged property, prior to the commencement of statutory proceeding to foreclose, and who is not a party to such proceedings, is not bound by the judgment of foreclosure, and may when the mortgage *fi. fa.* is levied, go behind the judgment and set up that the mortgage was barred by the statute of limitations at the date of the filing the petition to foreclose." See also, 58 Ga. 158, Lillienthal vs. Champion, where it is held that a purchaser before foreclosure proceedings may go behind the judgment and show usury.

Also, 58 Ga. 78, Stokes vs. Maxwell, where the right of a purchaser to go behind the foreclosure and set up the statute of March, 1869, was denied on the ground that he purchased *after* suit was begun.

Under the laws of Georgia providing for statutory foreclosure it was not permitted for *any one* to intervene in the suit.

Code of Ga. § 3965.

But those not parties and who could not become parties are not precluded by the foreclosure. 54 Ga. 469, 59 Ga. 819.

2. So whatever knowledge Sanger may have had of the foreclosure of the Spalding mortgage in McIntosh Superior Court, he could not have interposed.

The question arises, if it be lawful for Sanger to take advantage of this statute of March, 1869, being a junior mortgagee, when he could without doubt have taken advantage of it, after foreclosure of the Spalding mortgage, if he had been a purchaser of Cambers Island from P. M. Nightingale?

As a general proposition the rights and liens of mortgagees are not affected if they are not made parties to foreclosure proceedings in the suit of another mortgagee.

2d Hilliard on Mortgages, p. 156 § 51 *et seq.*

There is no question in the case of attacking a judgment collaterally.

The questions are: 1. Fraud, which renders void all judgments, &c. Code of Ga., §§ 1945 to 1947, 3178, 3595, 3596; and, 2, superiority of lien by reason of the absolute bar of the Spalding mortgage.

3. And where a prior mortgage is barred by the statute of limitations, and is yet proceeding to foreclose without subsequent mortgagees being made parties, such subsequent mortgagees may *intervene*, and recover against the prior mortgagee.

2d Hilliard on mortgages p. 160, note (a).

18 Cal. 482. Lord vs. Morris. (decided by Mr. Justice Field)

52 N.C. 643. Yates v. Lilly.

[It has been shown that under statutory foreclosure in Georgia the subsequent mortgagee had no right to intervene.]

In California as in Georgia, a mortgage is only a security for a debt. Yet a mortgage in Georgia is a *deed* of a claim, a right, a demand.

54 Ga. 441 (447-8) Calloway vs. Peoples Bank.

46 Ga., 137. Allen vs. Lathrop.

41 Ga., 207. Lane vs. Partee. In this last case the Court says: A *bona fide* mortgagee, to the extend of his interest in the land mortgaged, stands upon the same footing as any other *bona fide* purchaser, etc." This is just the doctrine laid down in Lord vs. Morris.

So, in Georgia as in California the statute applies to "actions at law as well as suits in equity."

18 Cal., 486; Code of Ga., 2924, Acts of 1869, p. 133.

4. The decree of the court below, if valid, establishes the doctrine that the mortgagor, P. M. Nightingale, could by his failure to plead the bar of the statute of 1869, that is, "by his acts, confessions or neglect," be able to defeat the mortgage lien of appellant in favor of his own family, who, by the law, was precluded from setting up that statute. This principle is ably combatted by Judge McCay himself, in his high and palmy days, when he was one of the most distinguished judges the Supreme Court of Georgia ever had,—in 54 Ga., 463. Williams vs. Terrell.

5. But the question recurs, Does not the limitation law of March, 1869, bar the right of action and extinguish the remedy, upon all causes of action accruing prior to 1st June, 1865?

In this matter the ruling of the Supreme Court of Georgia is conclusive:

99 U. S., 25 (28), Mills vs. Scott. See also, especially, 5 Ga. 531 & 536.

104 U. S., 668. Koshonong vs. Burton. Wynn v. Lee.

Aside, then, from any other considerations, the case of Pitman vs. Elder, decided by Supreme Court of Georgia, at March Term 1886, is conclusive on this point. This case not yet being published, a certified copy of the decision is herewith submitted. See also Pamphlet decisions Ga. Supreme Court, March T. 1886 - p 11.

Henry D. Lowndes,

Jr. for Appellant

122-176

SUPREME COURT OF THE UNITED STATES.

No. 228.

WILLIAM H. M. SANGER, APPELLANT,

vs.

WILLIAM NIGHTINGALE,
WILLIAM NIGHTINGALE, EXECUTOR OF
PHINEAS M. NIGHTINGALE,
ELLEN NIGHTINGALE,
JOHN K. NIGHTINGALE, *et al.*

BRIEF OF

ALEXANDER R. LAWTON AND
RUFUS E. LESTER,

Solicitors for Defendants.

SAVANNAH MORNING NEWS PRINT.

NO. 228.

Supreme Court of the United States.

OCTOBER TERM, 1886.

WILLIAM H. M. SANGER, APPELLANT,

vs.

WILLIAM NIGHTINGALE AND OTHERS.

Brief of Alexander R. Lawton and Rufus E. Lester,

For Defendants.

Sanger, the holder of a mortgage dated 6th December, 1869, on Camber's Island, made by Phineas M. Nightingale, brought his bill to foreclose this mortgage and to set aside conveyances of this property made under foreclosure and sale under which Defendants claimed by virtue of a prior mortgage on the same property made by said Phineas M. Nightingale, 30th January, 1855.

The Complainant's contention presents only two questions which comprehend his entire case:

1st. Was the mortgage of 1855 satisfied and settled at the time of its foreclosure?

2d. If not actually satisfied and settled, were not the rights under it destroyed by virtue of the limitation act of Georgia of 1869?

I.

The mortgage under which Defendants claim was in existence and on record at time of the execution of the mortgage to Complainant.

See Record, printed, pp. 11, 39 and 46.
See Record, printed, p. 1 (Complainant's bill).

The Complainant, therefore, had notice of the existence of this mortgage, and knew that his was only a second mortgage.

A mortgage is not only a lien upon the property mortgaged, but "is notice from the time of record to all the world."

Code of Georgia, § 1954.
Code of Georgia, § 1956.
Code of Georgia, § 1960.

The Complainant recognizes the older mortgage and sets it forth in his bill.

See printed Record, pp. 2 and 3.

But alleges (see Printed Record, p. 3,) that in the month of June, 1870, "the said P. M. Nightingale had fully adjusted, paid "off and settled the indebtedness thereon to the estate of "E. Molyneux by selling, releasing and transferring to the "widow of said Molyneux, Mrs. Eliza H. Molyneux, who was "solely authorized to receive the proceeds of said debt due on "said mortgage, a tract of land known as Dungeness, for the "expressed consideration of $25,000 in full satisfaction, pay-"ment, settlement and cancellation of said mortgage on Cam-"ber's Island, originally made to Charles Spalding by P. M. "Nightingale, all of which he alleges will appear by reference "to four Exhibits annexed to his bill marked C, D, E and F."

See Printed Record, p. 3.

This is the whole of Complainant's case in both allegation and proof on this question. Except the testimony of A. R. Lawton and W. S. Basinger on pp. 74 et seq. and 84 et seq. Printed Record.

Exhibit "C" is a plain deed from P. M. Nightingale to Eliza H. Molyneux, conveying Dungeness to her for $25,000.

There is nothing in this showing, or tending to show, that this conveyance was in satisfaction of the mortgage on Camber's Island.

See p. 14, Printed Record.

At the time of this conveyance there was due on this mortgage over one hundred thousand dollars. By arrangement Dungeness was taken in part payment to the amount of $25,000, and a further deduction made for slaves, which together left a balance due, after these deductions, of $51,250.

See testimony of A. R. Lawton, Printed Record, p. 85.

Exhibit D. Is a letter from P. M. Nightingale to Complainant, dated 17th June, 1870, stating that Mrs. Molyneux would be willing to take Dungeness in full satisfaction of the mortgage, provided he could arrange satisfactorily with his other creditors.

Sanger, it seems, would not or did not, "arrange," and so there was nothing by way of consideration or by way of inducement acted upon by Sanger to make any such proposition binding upon her or to give Sanger any claim upon her.

See p. 15, Printed Record.

If this is submitted as a contract with Sanger, it fails.

1st. Because Sanger was no party to it.

2d. Because its terms were not complied with by Sanger. He did not "arrange."

3d. Because there was no consideration passing from him. All the elements of a contract were wanting.
Code of Ga., § 2739, 2740.

Exhibit E. Is a letter from Nightingale with nothing in it showing any contract or agreement for the release of the Spalding mortgage.
See Printed Record, p. 16.

Exhibit F. Is a letter of the same kind showing that Sanger would not agree to any proposal of settlement.
See p. 17 Printed Record.

These letters prove nothing to show a settlement or cancellation of the mortgage. But if they did, it is a sufficient reply that there is nothing in them to show that Mrs. Molyneux, these Defendants, or any one claiming under the Spalding mortgage, were in privity with Nightingale, and therefore they would not be evidence against them.

In passing upon this case Judge McCoy says:

"On the trial various letters of P. M. Nightingale, the mort-
"gagor, were offered in order to show by his statement that
"the first mortgage was settled, but the Court rejected the let-
"ters as not competent to show as against the Defendant such
"settlement. They are only the unsworn statements of one
"interested to make them, and are not evidence at all against
"the mortgagor or against any one purchasing at the foreclos-
"ure sale, unless there was evidence, which there is not, of a
"conspiracy between Defendants and P. M. Nightingale to
"keep open this mortgage after it was settled."
Sanger vs. Nightingale, 4 Woods 483 (485).

It was contended that the Defendants gave no consideration for an interest in this mortgage.

It can make no difference whether the equitable or real interest in this mortgage passed to them upon a valid consideration or not.

Judge McCoy says: "It was contended that there was no "consideration for the transfer of the mortgage to the Nightin- "gale children, that there is no evidence that they had any "claim to Dungeness; but I think this is wholly immaterial. If "the mortgage was valid at the time and unpaid, it would make "no difference to the Complainant even if the transfer made no "pretense of consideration."

Sanger vs. Nightingale, 4 Woods (485).

It was also contended that the foreclosure of this first mortgage was void because the transfer was made before foreclosure proceedings were commenced in the name of Spalding, the original mortgagee.

To this we reply, in the language of Judge McCoy, in the same case (4 Woods, 485 and 486): "The foreclosure was "in the name of the original mortgagor and was not objected "to by any person having an interest in the mortgage. Any "person having such interest would have a right, if he saw fit," to foreclosure in the name of the original mortgagor. If the real owners of the mortgage have and do not complain, what is that to the Complainant? These facts as well as the consideration of the transfer, the delay in the foreclosure, are all matters to be considered in determining whether or not the mortgage was paid off or in any way settled. But the evidence of Mr. Lawton and his partner is so plain and positive as to leave no doubt that after the deed to Dungeness and after the adjustment for the emancipation of slaves, there was still due on the original mortgage debt over $50,000. Nor does it make any difference if Mrs. Molyneux, who, it seems, was quite a wealthy woman and especial friend of the family, took little care to press for her money. Nay, it seems to me, if her debt was really unpaid, she would have a right, since it was the oldest lien, to keep it "and de- "liberately and intentionally and openly use it for the purpose "of preserving the old home of the children of the family. If "the mortgage debt was a subsisting lien and older than the "Complainant's mortgage, it would be no concern of his for "whose benefit it was used. Her transfer of it for a small con- "sideration, as for the quit claim to Dungeness or even as a gift "to the Nightingale children, are facts which with other cir- "cumstances, if any such were in proof, might go to give color "to the charge that the mortgage was paid off, or in fact was "settled. But the evidence fails to show this, or to give any "other facts to be aided by her conduct in the premises."

II.

The Complainant contends that the Spalding mortgage made in 1855 became extinct on the 1st of January, 1870, by virtue of a statute of Georgia, approved 16th March, 1869 (Pam. Ga. Statutes 1869, p. 133), inasmuch as no proceedings were had to foreclose the mortgage until after the 1st of January, 1870. The 6th Section of that act reading as follows:

"That all other actions upon contracts, express or implied, "or upon any debt or liability whatsoever to the public, or a "corporation, or a private individual or individuals, which ac- "crued prior to 1st June, 1865, and are not now barred, shall "be brought by 1st January, 1870, or both the right and the "right of action to enforce it shall be forever barred."

This statute in its effect is not different from ordinary statutes of limitations.

That it does not destroy the cause of action is decided by the Supreme Court of Georgia.

George vs. Gardner, 49 Ga. 441 (449).

The Court in this case decide the Act of 1869 to be constitutional, because in the opinion of the Court it does not destroy the right, but only effects the remedy, like an ordinary statute of the like character.

The Court uses this language (pp. 449, 450):

"This construction of the Act of 1869 does not invade or "impair the obligation of the plaintiff's contract and thereby "render the Act unconstitutional, it only affects the remedy on "that contract."

If the meaning of this statute is to destroy the debt it is to destroy the jurisdiction of courts over it. The Constitution of Georgia, 1868, denied to the courts jurisdiction over contracts the consideration of which was slaves. But the courts decided this provision unconstitutional and sustained the jurisdiction of the courts over such contracts.

Harris vs. Gray, 49 Ga. 585.

Limitation acts can affect the remedy only. Otherwise they are unconstitutional as against that provision of the Constitution of the United States prohibiting the States from making laws violative of the obligation of contracts.

Angel on Limitation, 6th Ed., §22.

The courts do take jurisdiction of causes subject to the statutory bar, and enforce them. The pleading of the statute being only a personal privilege of the debtor.

Parker vs: Irwin, 47 Ga. 405 (308).

The Court in this case say:

"It is hardly necessary to elaborate the decisions of the "Court on the first point made in this case, that to avail him-"self of the statute of limitation a defendant must plead it"

The first point being the question whether after a judgment, without the plea of the statute having been interposed, upon a cause subject to the statutory bar, the question of the statute could be raised.

That it is only a personal privilege of the debtor to plead the statute is most clearly shown by those many and concurrent decisions of the Courts declaring that an administrator may pay a debt barred by the statute of limitation; nay, that he may reserve a debt due to himself, although barred, and that neither heirs nor creditors can object.

Williams on Executors, § 1635.
Norton vs. Fletcher, 1 Atk., 526.
3 Young and Collier, 211 (note a).
15 Vesey, 498.
T. U. P. Charlton, R. 159, Ex Parte Corg.
Baker and Wife vs. Bush, 25 Ga., 594.

The Court in this last case say:

"If principle be the test, it would seem that the executor or "administrator is not bound to plead the statute. The testator "or intestate is not bound to plead it; and the executor or "administrator stands in his place."

Now, if the cause exists notwithstanding the statute, and the courts have jurisdiction and the right to enforce the contract,

and does enter judgment upon it, it is against principle to hold that a creditor can attack the judgment, either directly or collaterally, as a nullity because the cause of action was liable to the statutory bar.

We submit further, that a judgment of foreclosure having been entered in this case in the Supreme Court of McIntosh county, it is not competent for the Complainant to attack it collaterally, by bill or otherwise, in another court.

Judgments which by any possibility may be valid cannot be collaterally attacked.

We submit further, that this judgment having been rendered and a sale having been made under it to some of these Defendants, they are *bona fide* purchasers for value, and the judgment being regular they cannot be affected by rights or claims of another creditor which may or may not have been known to them at the time of purchase.

The fact that the creditor who attacks the judgment is a mortgage creditor cannot affect the question.

A mortgage in Georgia is only a security for a debt and passes no title.

Code of Ga. §1954.

The case of Lane vs. Porter, 25 Ga., 202 (208), wherein the Court says, "A *bona fide* mortgagee to the extent of his interest "in the land mortgaged, stands upon the same footing as any "other *bona fide* purchaser, without notice of the trust," does not decide the question here. It was not before the Court. The question was, whether a mortgagee was to be affected by trust upon land of which he had no notice.

Upon these questions Judge McCoy, in Sanger vs. Nightingale, 4 Woods, 483, expresses himself as follows:

"It will, however, be noticed that in all these cases the Defend-"ant was the purchaser of all the mortgagor's rights; that he

"had the title to the premises, subject, of course, to the mort-
"gage, so far as it would be an irresistible claim as against the
"mortgagor. There are, so far as I can find, no cases, except the
"California cases, giving this right to a subsequent mortgagor
"who has not the title—who has only a debt with a mortgage
"lien. He does not stand in the position of the Defendant; he
"does not have the title to the premises with the rights incident
"to every title, to defend it against all claims whenever they
"come, except in the cases where, under a settled rule of law,
"the grantor has by his acts estopped him; as if, for instance,
"before his purchase the grantor has submitted to a judgment.
"In such a case, being a purchaser after the commencement of
"the proceedings, he is a privy to the judgment, and is therefore
"bound by it just as his grantor would be. Without ques-
"tion, there are several California cases where the privilege is
"also allowed to a subsequent mortgagee, but these cases are
"anomalous, and are made by the Court to depend upon the
"peculiar language of the California statute. The first case is
"Lord vs. Morris, 18 Cal., 482, though under the facts of that
"case it would be clear, even under the Georgia cases, the second
"mortgagee would have a right to set up the statute.

"The second mortgage was not made by the maker of the first
"mortgage. He has sold the fee to the third party, and it was
"the mortgagee of these purchasers who was permitted to insist
"that the first mortgage was barred by the statute. They had a
"right to stand in the shoes of their mortgagor, and as he was a
"purchaser of the title from the first mortgagor, they had the
"same right he had. It is true the Court, in delivering its opin-
"ion, does announce the general rule, that by reason of the
"peculiar character of the California statute a different rule pre-
"vails in that State from other States and in England; and one
"of the leading peculiarities to which the judge refers is that of
"the California statute bars the mortgage whenever the debt is
"barred; and he specifically refers to the case of Elkins vs.
"Edwards, 8 Ga. 325, as an instance how the Georgia statute
"differs from that peculiarity of the Caliafornia statute on which
"the Court bases its opinion. In that case the mortgagor had
"made a subsequent promise to pay the debt and keep up the
"mortgage, but the Court held that as at the time he had parted
"with his title, no act of his could give validity to the barred
"lien.

"In the case before me, Nightingale, the father, was still the
"owner of the title when he allowed this judgment of foreclosure
"to go against him. There are other California cases referred
"to, to-wit: Coster vs. Brown, 23 Cal. 142, and Grattan vs.
"Wiggins, 23 Cal. 16, but in both these cases though the lan-
"guage of the Court extends to a mere mortgagee, yet, in fact,
"the parties who were permitted to plead the statute were the

"persons who had bought the title from the mortgagor, and were "under decision in this State, Georgia, entitled so to plead. "Upon the whole, therefore, I am of the opinion that the subse- "quent mortgagee has no more right to plead the statute, as "though he stood in the shoes of the debtor, than any other "creditor. He has no title to the land. He has nothing but a "mortgage lien. The Georgia courts have decided that a judg- "ment creditor could not set up, as against another judgment "creditor, that the debt of the latter was tainted with usury, and "there is nothing in a Georgia mortgage putting the mortgagee "in a better position than a judgment creditor. It is true he has "a lien on the land, but so has the creditor by judgment. It is "true, also, that our courts have said of the mortgagee, that if "he obtains his mortgage without notice of a secret lien, he is "for his protection to be treated as a purchaser. Not that he is "a purchaser, but that he is to be treated as such for his protec- "tion. But he has yet no title, nor was it the intent of these "decisions so to hold, because the statute in express terms says "that in Georgia the mortgagee has no title, but only a lien. I "am therefore of the opinion that a decree ought to be entered "for the Defendants, the children of P. M. Nightingale, denying "the prayer of Plaintiff's bill."

A. R. Lawton